129-47 cited Rosenwasser v. Spieth

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 122.

NATHAN ROSENWASSER AND JENNIE A. SPIETH,
APPELLANTS,

vs.

JOHN BERRY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

FILED OCTOBER 14, 1885.

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1 Circuit Court of the United States, Maine District, First Circuit.

At a term of the circuit court of the United States for the first circuit, begun and held at Portland, within and for the district of Maine, on Monday, the twenty-third day of September, in the year of our Lord one thousand eight hundred and eighty-four, before Honorable Le Baron B. Colt, circuit judge.

NATHAN ROSENWASSER *et al.*
v.
JOHN BERRY. } No. 311.

On the 23d day of February, A. D. eighteen hundred and eighty-three, William Henry Clifford, Esq., solicitor, filed the following bill of complaint:

To the honorable justices of the circuit court of the United States within and for the circuit of Maine and district of Maine:

Your orators, Nathan Rosenwasser and Jennie A. Spieth, say they are both citizens of the city of Cleveland, in the county of Cuyahoga and State of Ohio, and that the said respondent, John Berry, is a citizen of the city of Biddeford, in the State of Maine.

And thereupon your orators complain and say that heretofore and before the eighteenth day of April, 1882, the said Nathan
2 Rosenwasser was the true, original, and first inventor and discoverer of a certain new and useful invention, to wit, of a percolator—an improved machine and apparatus for percolating and filtering liquids and substances—and that said invention was not known or used by others before said Rosenwasser's invention and discovery thereof, and was not at the time of the application for letters patent therefor in public use or on sale with the consent or allowance of the said Nathan Rosenwasser, as the inventor and discoverer thereof, contrary to the provisions of the statutes of the United States in such case made and provided.

That said Nathan Rosenwasser, being such inventor, made application, in writing, to the Commissioner of Patents of the United States for the granting of letters patent for said invention, and accompanied the same with a written description of the said invention and discovery and the manner and process of making and using the same in such full, clear, and exact terms as to enable any person skilled in the art or science to which the said invention and discovery appertains or with which it is most nearly connected to make and use the same, and with a specification of the parts and improvements and combination which he claimed as his invention, and with drawings (a model not having been required by the Commissioner of Patents) and written references explaining the principle and mode in which he contemplated the application of the principle, by which it might be distinguished from other inventions; and he did particularly point out and distinctly claim the part, im-

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2 Rosenwasser was the true, original, and first inventor and discoverer of a certain new and useful invention, to wit, of a percolator—an improved machine and apparatus for percolating and filtering liquids and substances—and that said invention was not known or used by others before said Rosenwasser's invention and discovery thereof, and was not at the time of the application for letters patent therefor in public use or on sale with the consent or allowance of the said Nathan Rosenwasser, as the inventor and discoverer thereof, contrary to the provisions of the statutes of the United States in such case made and provided.

That said Nathan Rosenwasser, being such inventor, made application, in writing, to the Commissioner of Patents of the United States for the granting of letters patent for said invention, and accompanied the same with a written description of the said invention and discovery and the manner and process of making and using the same in such full, clear, and exact terms as to enable any person skilled in the art or science to which the said invention and discovery appertains or with which it is most nearly connected to make and use the same, and with a specification of the parts and improvements and combination which he claimed as his invention, and with drawings (a model not having been required by the Commissioner of Patents) and written references explaining the principle and mode in which he contemplated the application of the principle, by which it might be distinguished from other inventions; and he did particularly point out and distinctly claim the part, im-

provement, and combination which he claimed as his invention and discovery, which said description was signed by the said Nathan Rosenwasser and attested by two witnesses and filed in the Patent Office; that the said Nathan Rosenwasser made oath that he verily believed that he was then the original and first inventor and discoverer of the invention and discovery for which he then solicited a patent, and that he did not know or believe that the same was ever before known or used; and, also,
3 that he then was a citizen of the United States; and the said Nathan Rosenwasser, at the same time, paid into the Treasury of the United States the sum of thirty dollars, and received a receipt therefor, and then and there also duly complied in all other respects with all the necessary conditions and requirements of the statutes of the United States in such case made and provided prior to the granting of the letters patent hereinafter mentioned. On the eighteenth day of April, 1882, letters patent of the United States, bearing date on that date and day, were issued to the said Nathan Rosenwasser according to law, whereby there was granted to him, his executors, administrators, or assigns, for the term of seventeen years from the eighteenth day of April, 1882, the full and exclusive right and liberty of making, constructing, using and vending to others to be used the invention and discovery aforesaid, a description whereof was given in the words of the said Nathan Rosenwasser in the said schedule annexed to the said letters patent and was made a part of the same; and the said letters patent were issued in the name of the United States of America, and were sealed with the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents, and were numbered 256,504, and were issued and delivered to the said Nathan Rosenwasser; that thereupon, after the issuing of the said letters patent as aforesaid, the said Nathan Rosenwasser put the said invention into use by making, using, and vending the same to others and licensing large numbers of such machines. And your orators pray that said letters patent and the schedule annexed thereto as aforesaid may be deemed and taken as part of their bill, and to the originals of which, or a duly authenticated copy thereof, now in your orators' possession and ready to be produced, they crave leave to refer.

And your orators further show that since the granting of said letters patent, to wit, on the sixth day of May, 1882, said Nathan Rosenwasser, by a paper in writing, under seal, duly sold,
4 assigned, and transferred to said Jennie A. Spieth the undivided one-fourth part of the whole right and title and interest in and to the said invention and in and to the letters patent therefor; the said undivided one-fourth part to be held and enjoyed by the said Jennie A. Spieth, for her own use and behoof and for the use and behoof of her legal representatives, to the full end of the term for which said letters patent were or may be granted (thus including extension), as fully and entirely as the same would have been held and enjoyed by said Nathan Rosenwasser had said assignment and sale not been made; and on the twenty-second day of

June, 1882, said assignment was duly recorded in the Patent Office. Your orators further saith that in like manner, to all intents and purposes, said Nathan Rosenwasser, by a paper in writing, under seal, on or about said twenty-second day of June, 1882, sold, assigned, and transferred to Hermann D. Zucker and his assigns an undivided one-fourth interest in said letters patent and of all rights under the same, and said assignment was recorded in the Patent Office at Washington on or about the twenty-second day of June, 1882; and thereafter, on the twenty-fourth day of September, 1882, by a paper in writing, under seal, the said Hermann D. Zucker did sell, assign, transfer, and set over unto the said Jennie A. Spieth all the right, title, and interest whatsoever which he had in said invention and letters patent, to be held and enjoyed by the said Jennie A. Spieth, for her own use and behoof and for the use and behoof of her legal representatives, to the full end of the term for which said letters patent are or may be granted (thus including extension), as fully and entirely as the same would have been held and enjoyed by said Hermann D. Zucker had said sale and assignment not been made.

Your orators further say that they are the full and complete owners of said invention and letters patent and every interest therein, and all rights and privileges thereunder and thereby secured to each, being the owner of one full undivided half of the same.

5 Your orators further show that the said invention and discovery so patented — aforesaid is of very great utility, and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orators' exclusive right to the same; and your orators would, but for the wrongful acts of the said defendant and others acting in concert with him, have made large gains, profits, and advantages from the manufacture, use, and sale of the said invention; and your orators would, but for the wrongful acts and doings of the said defendant and others acting in concert with him, now be enabled to use the said invention, to which they are entitled to the exclusive right as aforesaid, with profit and advantage, but that by the said wrongful acts and doings they are now prevented and hindered from so doing. And your orators further show unto your honors, upon information and belief, that the said defendant, well knowing the premises and the rights and privileges secured unto your orators, and in order to deprive them of the profits, benefits, and advantages which might and otherwise would have accrued to them at Biddeford, in the State of Maine, and within the district and circuit of Maine, and, without license or permission of your orators or either of them the said defendant has ever since the thirty-first day of May, 1882, unlawfully and wrongfully made and caused to be made, sold and caused to be sold, used and caused to be used, percolators each and all containing the said invention and discovery, improvements and combinations, consisting, as therein and in the schedule set forth, of the employment and use of the combination, with a vessel and adjustable tube, of a percolator having a large filling and discharge orifice at its lower end, with which connects the lower end of an adjustable tube or pipe, said percolator containing a main body, a constricted inlet, an enlarged

open end, which serves the double purpose of a discharge or outlet and as an opening through which the percolator is charged with filtering substance when the device is to be used as a filter,
6 or with any drug from which an extract is to be made; also containing a perforated plate. This plate may if desired be replaced by any porous diaphragm or interposing substance, such as filter paper, cloth, pumice, or the like, said diaphragm being for the purpose of preventing the drug from escaping from the percolator during its use, and it is to be secured in position by suitable means.

That said defendant, in the same manner as described in your orators' letters patent and the specifications made a part thereof, uses and causes to be used the percolators made and caused to be made by him, sold and caused to be sold by him, and used and caused to be used by him, by charging the container with any drug or substance from which an extract is to be made. The drug is charged into the container through an enlarged mouth, and contrary to the way and manner of using percolators prior to your orators' invention and discovery, by charging the menstruum into the large mouth, which made it impracticable to obtain any increased or variable pressure upon the menstruum unless a cap piece was fitted over the enlarged mouth and a tube or its equivalent attached and connected either to an elevated reservoir containing the menstruum or attaching some special pressure apparatus connected with said tube. Said defendant, in exact imitation of your orators' patent and process, charges the container in exactly the opposite manner from that above described as heretofore used and employed prior to your orators' invention and discovery and letters patent, namely, to the end of the container opposite the charging mouth, to exert any desired pressure upon the menstruum; after the container is charged in the usual manner through its enlarged mouth, as above set forth, in inverting the percolator, attaching a flexible tube or other tube to the constricted mouth and applying the menstruum through said tube from an elevated reservoir, and when thus used the enlarged mouth became and becomes the ultimate discharge, which was never before known or practiced, as your orators verily believe; and in exact imitation of your orators' letters patent and the
7 specification forming a part thereof, said defendant elevates the reservoir more or less to exert a greater or lighter pressure and to drive the menstruum through the drug more or less forcibly and rapidly, and nicely adjusts and varies the pressure at pleasure to suit the requirements of any case, and uses a stop-cock to govern the quantity of the menstruum admitted to the percolator. Your orators aver that said unlawful making, use, and sale by the defendant as aforesaid is in violation and infringement of your orators' exclusive rights and privileges, and that the said defendant has derived and received and is still deriving and receiving from such use great gain and profits, but to what amount your orators are ignorant and cannot set forth; but your orators believe the same to be about the full sum of one thousand dollars, and so charge the fact to be, and pray that the defendant may be required to make a dis-

closure of all such gains and profits. And your orators in like manner aver that the defendant, though requested to desist from such unlawful use and to pay your orators such gains and profits as the defendant has actually made, refuses so to do, by means thereof and whereof your orators are and have been greatly injured and are now prevented from putting the said invention or discovery into successful operation and are deprived and prevented from receiving the gains and profits to which they are lawfully entitled from the exclusive rights and privileges so granted and secured to them as aforesaid, and which they would have derived and acquired and would now derive and acquire but for said unlawful acts of the said defendant. And your orators pray that the said defendant may be compelled by a decree of this honorable court to account for and pay over unto your orators all such gains and profits as have accrued or arisen to or been earned or received by the said defendant and all such gains and profits as your orators would have received but for the said wrongful acts and doings of the said defendant; and that the said defendant, his attorneys, solicitors,
8 clerks, servants, agents, and workmen, may be perpetually enjoined and restrained by the decree of this court from directly or indirectly making or causing to be made, using or causing to be used or vending to others to be used in any manner any machines or percolators containing or embodying the said invention granted by the said letters patent as issued and extended and assigned as aforesaid unto your orators, and from infringing upon or violating the said letters patent by the use or sale of the said machines in any way whatsoever, and that all such infringing machines may be forthwith destroyed or delivered up to your orators, and that the said defendant may be decreed to pay the costs of this suit, and that your orators may have such other relief as the equity of the case may require and as to your honors may seem meet.

To the end, therefore, that the said defendant may, if he can, show why your orators should not have the relief herein prayed, and may full, true, direct, and perfect answer make, upon his corporal oath, according to the best of his or his clerks', agents', or workmen's knowledge, remembrance, information, and belief, to the several matters hereinbefore averred and set forth fully and specifically interrogated, and especially that the said defendant answer and set forth:

First. Whether the said Nathan Rosenwasser was not prior to the eighteenth day of April, 1882, the true, first, and original inventor and discoverer of said invention and discovery described in said letters patent No. 256,504 and every material part thereof; and, if not, who was or were the true, original, or first inventor or inventors of the same, where he or they reside, and where or when he or they invented or discovered the same, and how the invention or discovery of such other person or persons, if any, differed, if at all, from the said invention or discovery of said Nathan Rosenwasser.

Second. Whether the said defendant has at any time, and, if so, where and when, made, sold, used, or caused to be made, sold, or used, any percolator or percolators containing, in combination

with a vessel, an adjustable tube, said percolator having a large filling and discharge orifice at its lower end and a restricted opening at its upper end, with which connects the lower end of the adjustable tube or pipe.

Third. Whether said defendant has at any time—if so, where and when—made, sold, used, or caused to be made, sold, or used, in connection with a percolator, the process of charging the drug into the container through an enlarged mouth and then inverting the container and applying the menstruum to the end of the container opposite the discharging mouth.

Fourth. Whether said defendant has made, sold, used, or caused to be sold, in connection with a percolator, substantially as above described, a stop-cock to govern the quantity of the menstruum admitted to the percolator.

Fifth. Whether said defendant has at any time—and if so, where and when—made, sold, used, or caused to be used, a percolator, substantially as described in letters patent No. 256,504 and for the purpose and to produce the same result or results and to produce pressure in the same way as described in said letters patent; and, if he has used the same, in what respect said percolators or percolator so used and sold, made and caused to be made by said defendant, if at all, differed from the percolator described in said letters patent.

Sixth. Whether the defendant has not made large gains and profits from the use and sale of said percolators; and, if so, to what amount.

Seventh. Whether the circular entitled "Important to every druggist; patented Oct. 27, 1882," followed by a picture and diagram of the percolator made, used, and sold by you and then followed by the words "Percolation made easy with Berry's pressure percolator; solid facts for your consideration; money, time, labor saved and best results gained by using one," and ending with the words "All communications should be addressed to John Berry, pharmacist, 147 Main street, Biddeford, Me.," is your circular, and is the diagram and picture thereon a correct picture and diagram of the percolator made, used, sold, and caused to be made by you, and is the description of said diagram and of the process in said circular a correct description of the percolators made by you and of the process of using them used by you?

May it please your honors to grant to your orators a writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, directed to the said defendant, John Berry, commanding him to be and appear and make answer to this bill of complaint and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

May it please your honors to grant to your orators a provisional or preliminary injunction, issuing out of and under the seal of this honorable court, enjoining and restraining the defendant and his attorneys, solicitors, clerks, servants, workmen, and agents, to the same purport, tenor, and effect hereinbefore prayed for in regard to said perpetual injunction.

And your orators will ever pray.

NATHAN ROSENWASSER AND
JENNIE A. SPIETH,
By WILLSON & SYKERA,
Their Solicitors.

NOTE.—The defendant is required to answer the interrogatories numbered, respectively, first, second, third, fourth, fifth, and sixth.

UNITED STATES OF AMERICA,
Northern District of Ohio, Eastern Division:

On this fourth day of February, 1883, before me came Nathan Rosenwasser, to me personally known, who, being by me
11 duly sworn, did depose and say that he is one of the complainants in the foregoing bill of complaint named, and that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

NATHAN ROSENWASSER.

Sworn to before me by the said Nathan Rosenwasser and by him in my presence signed this fifth day of February, 1883.

CHAS. W. BELL,
U. S. Commissioner, N. D. O.

Whereupon a subpœna in chancery issued to the respondent, returnable on the first Monday of April next ensuing; also a summons to show cause why a preliminary injunction should not issue against him, as prayed for in said bill of complaint, both of which were returned duly executed. Said cause was entered in court, and the respondent duly entered his appearance by his solicitor, Wilbur F. Lunt, Esq., on whose motion the complainant was required to furnish security for costs in the sum of $250, and the order of the court in that behalf was complied with; and on the second day of said April, the petition for a preliminary injunction being heard on affidavits and argued by counsel before Webb, J., said injunction was denied. Said cause was continued to April term, A. D. 1883, and on the fifth day of June next ensuing was filed the following
12 answer:

The answer of John Berry, defendant, to the bill of complaint of Nathan Rosenwasser and Jennie A. Spieth, complainants.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answering saith:

1. That he has been informed and admits it to be true that upon application by the complainant Rosenwasser letters patent of the United States were granted and issued to the said Nathan Rosenwasser on the eighteenth day of April, A. D. 1882, for an alleged improvement in percolators; and this defendant says he does not know and is not informed, save by his said bill of complaint, whether or not said Nathan Rosenwasser did properly make application for said patent, and did comply with all the requirements of law, and did have said patent issued to him in due form of law, and leaves the complainants to make such proof thereof as they shall be advised is material.

2. And this defendant, further answering, says that he does not know and is not informed, save by said bill of complaint, whether or not said Nathan Rosenwasser sold, conveyed, or assigned his right, title, and interest in the said patent and alleged invention secured by said letters patent, or any interest therein, to the said Jennie A. Spieth and Hermann A. Zucker, or whether or not such assignment was recorded in the Patent Office, and he leaves the complainants to make such proof thereof as they shall be advised is material.

3. And this defendant, on information and belief, denies that by virtue of any such patent and assignment as mentioned in
13 said bill of complaint said complainants became or ever were possessed of or vested with any exclusive right to use, make, or sell, in the United States or elsewhere, the alleged invention patented by said letters patent.

4. And this defendant, further answering, says that he is informed and believes it to be true that the description of the alleged invention, as set forth in the specification annexed to said letters patent, is incomplete and ambiguous, and the specification does not show the method of making and using the said alleged patented invention in such full, clear, and exact terms as to enable any person skilled in the art or science to which it appertains to make and use the same.

5. And this defendant, further answering, denies that the said invention so patented to the said Nathan Rosenwasser is of great or any utility and value, or that the same has been introduced into public use, or that the public generally or any portion thereof have acquiesced in and acknowledged the complainants' exclusive right to the same or any portion thereof.

6. And this defendant, further answering, says that he is informed and believes, and therefore alleges it to be true, that the said invention and discovery and the same principle and combination, or the substantial and material parts thereof, patented in and by the letters patent mentioned in the bill of complaint aforesaid was patented on the twenty-second day of February, A. D. 1870, by letters patent of the United States granted and issued to one Samuel Woolston, who resided at Vincentown, in the State of New Jersey, and William Corfield, who resided at Philadelphia, in the State of Pennsylvania, and prior to the supposed invention and discovery thereof by the said Nathan Rosenwasser, and also patented on the four-

teenth day of June, A. D. 1870, by letters patent of the United States granted and issued to Albert Merrill, who resided at Cincinnati, in the State of Ohio, and by Edward Loysel, of Rue de Gretry, in the then Empire of France; by English letters patent dated No-
14 vember 10, 1854, numbered 2387, and prior to the supposed invention and discovery thereof by Nathan Rosenwasser, the patentee aforesaid.

7. And this defendant, further answering, says that he is informed and believes it to be true that the said invention and discovery and the same principle and combination or the substantial and material parts thereof patented in and by the letters patent mentioned in the bill of complaint aforesaid was mentioned and described in a printed publication—that is to say, in the Encyclopædia Britannica, volume 9, page 167, printed by Scribner & Co., New York, 1879; Ures' Dictionary of Arts and Manufactures, volume 2, pages 370 to 372, published in 1878; U. S. Dispensatory, 1841, 9th edition, page 784; 13th edition, pages 932, 933; 14th edition, pages 972 and 973; Parish's Pharmacy, 3d edition, page 135, published 1867, the same being publications published, issued, and publicly circulated and distributed prior to the supposed invention and discovery by Nathan Rosenwasser, the patentee aforesaid of the said alleged invention, discovery, principle, and combination, the said description being on the pages of said publications referred to. And this defendant, upon information and belief, alleges that he can obtain the titles and references to other published works wherein other and further descriptions of said alleged inventions are contained, and asks leave to introduce the same as an amendment to this answer when more particularly and exactly ascertained.

8. And this defendant, further answering, says that he is informed and believes it to be true that the said Nathan Rosenwasser, patentee as aforesaid, was not the original and first inventor and discoverer of the said invention and discovery or of any material and substantial part of the thing or of the principle and combination patented in and by the letters patent mentioned in the said bill of complaint, but that the same or substantially the same thing and the same principle and combination had been previously combined by and invented and discovered by one Hampton E. Hill, who
15 resided at Portland, in the State of Maine, and now resides at Saco, in said State, as early as A. D. 1869, and prior to the time when it is alleged in the said bill of complaint that the same was invented and discovered by Nathan Rosenwasser.

9. And this defendant, further answering, says that he is informed and believes it to be true that substantially the same principle and combination has been for many years in open, notorious, and common use in the United States and in Europe long prior to the time of the alleged invention and discovery by said Rosenwasser, and that the said Rosenwasser was not the first and original inventor and discoverer of the said invention and discovery or of any material or substantial part of the thing or of the principle and combination patented in and by the letters patent mentioned in said bill of complaint, but that substantially the same thing, principle, and combina-

tion was known to the defendant and to William Thum, late of Grand Rapids, in the State of Michigan, deceased, and to Hugo Thum, of said Grand Rapids; to —— ——, editor of the Dutch Amer-Kaniske Apotheker Zeitung of New York, in the State of New York, as early as A. D. 1877, and prior to the time when it is alleged in the bill of complaint the same was invented and discovered by Nathan Rosenwasser. And the defendant alleges that the same was known to other persons as the Real'sche Presse for more than five years prior to the alleged invention by said Rosenwasser, and the names of such other persons this defendant alleges he can obtain, and asks leave to introduce the same as an amendment to this answer when more particularly and exactly ascertained.

10. And this defendant, further answering, says that he is informed and believes it to be true and so alleges that the said invention and discovery and substantially the same principle and combination patented in and by the letters patent mentioned in the bill of complaint aforesaid was in public and common use in the United States, at Portland, in the State of Maine, by Hampton E. Hill, now
16 of Saco, in said State, as early as A. D. 1869, and by William Thum, of Grand Rapids, in the State of Michigan, deceased, in A. D. 1867, and by numerous other persons whose names this defendant, on information and belief, alleges he can obtain, and will ask leave to introduce the same as an amendment; and he alleges that such use was more than two years prior to the date of the alleged application of said Nathan Rosenwasser, patentee, for a patent thereunder.

11. And this defendant, further answering, upon information and belief alleges that said letters patent of the United States granted to said Nathan Rosenwasser are void for want of invention in the device and combination therein described and claimed.

12. And this defendant, further answering, says that he is the first and original inventor of the improvement on percolators claimed in letters patent of the United States numbered 266,081, dated October 17, 1882, granted to him, the said John Berry, and is now the sole owner of the same and of the rights secured and granted by said letters patent, and he avers that he has not manufactured, used, or sold any percolators except such as are described in his said letters patent, and he alleges that he has not infringed and still does not infringe upon the rights and privileges supposed in said bill to be secured to the complainants by said letters patent granted to said Rosenwasser.

13. And this defendant denies that the device and combination patented to said Rosenwasser is of any value or capable of practical use, or that there is anything in said device and combination fit for use which is patentable, and he alleges, upon information and belief, that the complainants have abandoned the manufacture, sale, and use of percolators constructed as described in said Rosenwasser's letters patent as impractical, useless, and worthless.

14. And this defendant denies that he has ever without lawful right contrived to injure said complainants or to defraud them of

any profits, benefits, and advantages accruing to them by virtue of said Rosenwasser's letters patent aforesaid.

17 Wherefore this defendant prays this honorable court that the prayer of said bill may be denied, and avers that the allegations thereof are not true.

And this defendant, in answer to the several interrogatories propounded in complainant's bill, says:

In answer to Int. 1. That said Rosenwasser was not the first and original inventor as hereinbefore set forth by the defendant.

To Int. 2. The defendant answers, No.

To Int. 3. The defendant answers, No.

To Int. 4. The defendant has used and sold stop-cocks for use in governing the quantity of menstruum admitted to the percolator.

To Int. 5. The defendant says he has never made, sold, or used, or caused the same to be done, any percolators like the combination claimed by the complainants.

To Int. 6. Defendant says he has made no profits therefrom.

And this defendant saith that all of the matters and things herein above alleged he is ready and willing to maintain and prove as the honorable court shall direct, and humbly prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN BERRY.

WILBUR F. LUNT,
Solicitor and Counsel for Defendant.

UNITED STATES OF AMERICA, *District of Maine,* } ss:

John Berry, of Biddeford, in said district, being duly sworn, does depose and say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own

18 knowledge, except as to matters therein stated on information and belief, and as to those matters he verily believes it to be true.

JOHN BERRY.

Subscribed and sworn to before me this fifth day of June, A. D. 1883.

C. E. GOODWIN,
Notary Public.

And on the 21st day of November, A. D. 1883, said cause having been continued to September T. of that year, is filed and allowed the following amendment to answer:

And now comes the said defendant and amends his answer in this case by inserting the following after the words Parish's Pharmacy, 3d edition, page 135, published in 1867, in article or allegation 7 of his answer, to wit: "Handbuch der Pharmacie, von Dr. Philipp Lorenz Geiger, printed and published at Stuttgart, Germany,

by Eberhard Frederich Wolters, in A. D. 1830, pages 157 to 161, inclusive; also Handbuch der Chemie mit Rüchsicht auf Pharmacie, von Dr. Justus Liebig, als neue Bearbeitung des ersten Bandes von Geigers Handbuch der Pharmacie, printed and published at Heidelberg, Germany, 1843, by C. F. Winter, at Wein, Germany, by C. Gerald, on pages 157, 158, 159, and in figures 10 and 11, in plate 1, in back part of said book, which two said last-mentioned works, printed in the German language, the defendant offers to produce for the inspection of the plaintiffs, and also a translation of the parts referred to herein into the English language;" also after the words U. S. Dispensatory, 1851, 9th edition, page 784, insert the words "by Wood and Bache, published at Philadelphia by Lippincott,
19 Grambo and Co.;" also after the words 15th edition, pages 932, 933, insert the words "by Wood and Bache, published at Philadelphia by J. B. Lippincott & Co., 1870."

Also by inserting in said answer, between articles 9 and 10, the following:

"And this defendant, further answering, says that he is informed and believes it to be true that substantially the same principle and combination has been for many years in open, notorious, and common use in the United States and in Europe more than two years prior to the time of the alleged invention and discovery by said Rosenwasser, and that said Rosenwasser was not the first and original inventor and discoverer of the said invention and discovery or of any material or substantial part of the thing, or of the principle and combination patented in and by the letters patent mentioned in said bill of complaint, but that substantially the same thing, principle, and combination was known to the defendant and to Adolph F. W. Neitsch, who resides at 156 Harrison avenue, in Brooklyn, in the State of New York, Hampton E. Hill, of Saco, in the State of Maine, more than two years before said Rosenwasser applied for his said letters patent; and this we will prove by the defendant, said Neitsch, said Hill, and George R. Ricker, Caleb J. Emery, Edward E. Sweet, of Rumford, Me., and Frederick Bacon, of Biddeford, Maine, and Charles A. Seigmond, of Boston, Massachusetts, to whom the same principle and combination was also known as aforesaid.

And this defendant amends article 10 in his said answer by inserting after the figures 1869 the following: "And by Adolph F. W. Neitsch, now residing at 156 Harrison avenue, Brooklyn, in the State of New York, at New York city, in said State, more than ten years prior to the present time, and by the defendant at Biddeford, in the State of Maine, as early as A. D. 1878, and he will prove this allegation by said Neitsch and by the defendant; and that the same was so used by said defendant is known to Edward E. Sweet, of Kennebunk;
George R. Ricker, Caleb J. Emery, and Frederick Bacon, of Bid-
20 deford, and Charles A. Seigmond, of Boston, by whom the defendant will prove such use, and the use of said device by Hampton E. Hill, as aforesaid, the defendant will prove by said Hill."

And the defendant further amends his answer by inserting be-

tween articles 10 and 11 the following: "That a combination and device for percolation, in form and principle substantially and essentially the same as claimed and described in said Rosenwasser's letters patent, referred to in complainant's bill, has been known to the art of percolation and has been a part of the knowledge of such art for over ten years prior to the application of said Rosenwasser for his said letters patent; and this the defendant will prove by himself, by said Neitsch, and said Hampton E. Hill, and, as illustrating the state of the art, will refer to the letters patent of the United States hereinbefore mentioned, and to the printed works referred to in article 7."

JOHN BERRY.

WILBUR F. LUNT,
Solicitor and Counsel for Defendant.

UNITED STATES OF AMERICA, *District of Maine*, } *ss:*

John Berry, of Biddeford, in said district, being duly sworn, does depose and say that he is the defendant named in the foregoing amendment to his answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he verily believes it to be true.

JOHN BERRY.

Subscribed and sworn to before me this sixteenth day of November, A. D. 1883.

[L. S.] C. E. GOODWIN,
Notary Public.

21 And on the 10th day of July, A. D. 1883, was filed the following replication:

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto say that they do and will aver, maintain, and prove this said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in their said bill they have already prayed.

Portland, July 8, 1883.

WILLIAM HENRY CLIFFORD,
Solicitor and Counsel of the Complainants.

Said cause is further continued to April term, A. D. 1884, when publication of testimony passes, as follows:

22 *Evidence for Complainants, Taken Pursuant to the 67th Rule of the Supreme Court of the United States, in Equity, as Amended, Before me, A. H. Davis, Examiner.*

PORTLAND, *Nov.* 1, 1883.

Present: William Henry Clifford, Esq., counsel for complainants; Wilbur F. Lunt, Esq., counsel for respondent.

Counsel for the complainants here formally introduces letters patent of the United States No. 256,504, dated April 18, 1882, granted to Nathan Rosenwasser, of Cleveland, Ohio, on a percolator, the same marked "Complainants' Exhibit A, A. H. D., Ex'r."

COMPLAINANTS' EXHIBIT A. A. H. D., Ex'r.

UNITED STATES PATENT OFFICE.

NATHAN ROSENWASSER, of Cleveland, Ohio.

Percolator.

Specification forming part of Letters Patent No. 256,504, dated April 18, 1882; application filed May 3, 1881. (No model.)

To all whom it may concern:

Be it known that I, Nathan Rosenwasser, of Cleveland, in the county of Cuyahoga and State of Ohio, have invented certain new and useful improvements in percolators; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it
23 pertains to make and use it, reference being had to the accompanying drawings which form part of this specification.

My invention relates to percolating apparatus to be employed for filtering purposes, or for making fluid extracts or decoctions, and it consists in a device constructed and adapted to operate substantially in the manner hereinafter specified.

In the drawings figure 1 represents my device in longitudinal section, and Fig. 2 shows the application of said device when used as a filter or in making fluid extracts.

A is the main body of my percolator.

B is a constricted inlet.

C is the enlarged open end, which serves the double purpose of a discharge or outlet and as an opening through which the percolator is charged with filtering substance when the device is to be used as a filter or with any drug from which an extract is to be made.

D is a perforated plate. This plate may, if desired, be replaced by any porous diaphragm or interposing substance, such as filter paper, cloth, pumice, or the like. This is to prevent the drug from escaping from the percolator during its use, and it is to be secured in position by suitable means.

E represents the drug from which an extract is to be made, or if the device is to be used as a filter, then E represents charcoal, sand, or any suitable filtering material.

I will describe my apparatus as employed in making fluid extracts. The container A is charged with any drug or substance, E, from which an extract is to be made. The drug E is charged into the container A through the enlarged mouth C. Now, by the ordinary process and mechanism for making fluid extracts it has heretofore been the practice to charge the menstruum into the large mouth C, but this method made it impracticable to obtain any increased or variable pressure upon the menstruum unless a cap piece were fitted over the enlarged mouth C, and a tube or its equivalent
24 attached and connected either to an elevated reservoir containing the menstruum or else some special pressure apparatus connected with said tube. All this in practice is impracticable, but by the employment of my device and method it is a very easy matter to charge the container A, and by applying the menstruum in exactly an opposite manner from that heretofore adopted, viz., to the end of the container A, opposite the charging mouth C, to exert any desired pressure upon the menstruum. Fig. 2 of the drawings illustrates my method and mechanism, which consists, after the container A is charged in the usual manner through its enlarged mouth C, as already specified, in inverting the percolator, attaching a flexible or other tube, F, to the constricted mouth B, and applying the menstruum through said tube from an elevated reservoir G. When thus used the enlarged mouth C becomes the ultimate discharge, which has never before, to my knowledge, been true in any method heretofore known or practiced. By elevating the reservoir G more or less a greater or lighter pressure is exerted by the menstruum, and it is, therefore, driven through the drug more or less forcibly and rapidly. This pressure, as may readily be seen, can be nicely adjusted and varied at pleasure to suit the requirements of any case.

A stop-cock, H, may be used to govern the quantity of the menstruum admitted to the percolator A.

What I claim is—

The combination, with a vessel, G, and adjustable tube F, of a percolator, A, having a large filling and discharge orifice at its lower end and a restricted opening, B, at its upper end, with which connects the lower end of the adjustable tube or pipe F, substantially as set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

NATHAN ROSENWASSER.

Witnesses:

JNO. CROWELL, JR.
ALBERT E. LYNCH.

25 *Admission as to Ownership of Complainants' Patent.*

It is admitted that Nathan Rosenwasser and Jennie A. Spieth are the owners of the complainants' aforesaid patent.

W. F. LUNT,
Counsel for Respondent.

Deposition of Nathan Rosenwasser.

Direct examination by WILLIAM HENRY CLIFFORD, Esq., counsel for complaimants:

Int. 1. What is your name, age, residence, and occupation?

Ans. Nathan Rosenwasser; 29 years old; Cleveland, Ohio; manufacturing and consulting chemist.

2. How long have you been a manufacturing and consulting chemist?

Ans. I graduated from the Philadelphia College of Pharmacy as such in March, 1877, and I have been engaged in charge of a wholesale manufacturing laboratory for four years and a half; also at the New York hospital, in charge of the drug department, for a half year.

3. State if you are a member of any society relating to pharmacy and medicine. If so, how long has your membership been, and what part have you taken in the proceedings of such society?

Ans. I am a member of three such institutions—a member of the Ohio State Pharmaceutical Association since its organization, about three years ago, and have been chairman of the committee on papers and queries, and read several original scientific papers before them. I am a member of the Cleveland Pharmaceutical Association; have delivered a course of lectures on chemistry before the
26 druggists of Cleveland; also I am a member of the American Pharmaceutical Association for three or four years, and have read a paper of scientific interest that was published in their proceedings.

4. State if you are one of the complainants in this case and the inventor named in the patent upon which this suit is founded.

Ans. I am, to both branches of the question.

5. State if you are familiar with percolators and the processes used in connection with them in the druggists' and apothecaries' art; how long you have been thus acquainted, and what degree of examination and study you have given to this subject previous to the date of your letters patent.

Ans. I am familiar with percolators and the processes of percolation, and have been so for over thirteen years prior to the date of my letters patent. I believe that I have given the subject as much study and examination as any other man in the country. I have made at least 100,000 lbs. of medicinal extracts by the process of percolation. I have used the Proctor, the Squibb, the United States Pharmacopœa, and other processes of percolation.

6. Please look at Complainants' Exhibit A, office copy of your patent, and enumerate the principal elements or features of the invention, more particularly those involved in Fig. 1 of the drawings to the same.

Ans. The invention consists in a combination of a reservoir (G, Fig. 2) to hold liquid, and to be discharged into a container (A, Fig. 2) having as its inlet for the liquid a constricted tube (B. Fig. 2) and as its outlet a wide discharge opening (C, Fig. 2) for the liquid in its passage through said container. The reservoir is connected with the container by a tube (F, Fig. 2) attached — the constricted inlet at one end, and with the reservoir at the other, to permit the discharge of liquid from the reservoir G into the container A to take place, to any adjustment of hydrostatic pressure made necessary in passing
27 into and through the container A. The container A is so made as to be able to hold a solid permeable by a liquid, and which solid is to be introduced into said container from the wide discharge end C to any desired space which said permeable solid may occupy from the constricted inlet B outward toward the mouth C. Against this solid, after it has been introduced into said container, is placed a diaphragm, made porous to prevent the escape of the solid while permitting liquids to pass; and this diaphragm is secured in place by suitable means against the drug or solid when so introduced, as described, into said container. When said diphragm is removed the said permeable solid is to be discharged from the wide discharge end C. The process of working this combination consists in placing any suitable permeable solid to be extracted into said container A and placing and holding said diaphragm in its position against the drug, and then attaching to the constricted inlet B the tube F, connecting the same with the reservoir G and allowing the liquid in the reservoir to flow downward through the tube F into the container A through its constricted inlet for liquid B, and the liquid, after percolating through the permeable solid, passes out through the open discharge end C into any receptacle for its collection. When the solid is sufficiently extracted and the liquid is collected the solid can be separately withdrawn from the wide discharge orifice C by removing the diaphragm placed against it, which has previously held it in place and resisted its expansion outward.

7. Have you read and examined letters patent granted to John Berry, of Biddeford, Me., No. 266,031, on a percolator, and do you understand the invention described therein?

Ans. I have and I do.

8. Will you describe the essential parts of the device set out in that patent with more particular reference to Fig. 2 of the drawings thereof?

Ans. This invention consists in a reservoir for liquids and a container (A, Fig. 1) for permeable solids, connected by means
28 of a constricted inlet and tube (M. C. N.). The container A for solids is provided with a wide filling and discharge outlet for solids, and is provided with a diaphragm introduced into said container after filling the same with the permeable solid to any desired space, and it is then by suitable means placed and held in

place against the permeable solid. The process of working said combination consists in attaching to the reservoir the tube *c* at its upper end and the container A at its lower end. The container A, being attached to the tube by its constricted inlet for liquid *n*, is now allowed to have the liquid from the reservoir flow into it and percolate through the solid and finally be discharged from its wide filling and discharge orifice C through a funnel, B, into a suitable vessel, R, to receive it. Said solid, after it is extracted sufficiently, is removed by first removing the diaphragm placed against it and then allowing the solid to be discharged from the wide filling and discharge orifice C, the cap piece or funnel B having been first taken off. The manner in which the container A is filled is by introducing a permeable solid through the wide filling end C to any desired height in the container A toward C from the opposite end of the container A.

(Adjourned to 10 a. m., November 2.)

NOVEMBER 2, 1883.

(Complainants here introduce office copies of letters patent No. 266,081, October 17, 1882, to John Berry, of Biddeford, for a percolator, marked "Complainants' Exhibit E, A. H. D., Ex'r.")

9. Will you now compare the devices set out in Complainants' Exhibits A and E and point out the similarities and differences, if any, in the mechanical structures thereof, as well as in the processes of using the same?

29 Ans. I find in each of them an elevated reservoir for liquid, a tube for carrying the same into a container by means of a constricted inlet within said container, and also the aforesaid containers each constructed with an enlarged filling and discharging outlet for solids as well as outlets for the liquid. I find in each of them a fixed upper diaphragm against which is packed a permeable solid, and also a lower diaphragm placed against the solid within said containers and held in place by mechanical device. There are no essential differences in the construction of either the reservoir, the tube, constricted inlet, or container. The process for using each of these devices consists in both in introducing liquid into the reservoirs; in both it flows through the tube into constricted inlets in the container; in both it permeates or percolates through the permeable solid; in both the permeable solid is prevented from expanding by means of the diaphragms and the cylinder of the container; in both the liquid finds its exit through the wide discharge end; through both, when the solid has been sufficiently permeated by the liquid, the diaphragms are removed from the containers out of the wide discharge and filling end for solids before the solid can be and is removed and cleaned out from the aforesaid containers. This constitutes the whole process of practically using each of these devices.

10. Please look at device marked "Complainants' Exhibit F, A. H. D., Ex'r," and state if this represents the percolator made according to the specifications of your letters patent, as far — it goes.

Ans. It does substantially.

(Said Exhibit F is here introduced by complainants.)

(Respondent objects to the introduction of Exhibit F as evidence tending to prove the construction of the device itself at the time of complainants' application for letters patent, because it does not appear that the identical device marked F was then in existence.)

11. Will you now look at device marked "Complainants' Exhibit G, A. H. D., Ex'r," and state if that is a correct representation of the device described in letters patent No. 266,081, to John Berry?

30

Ans. It is.

(Said Exhibit G is here introduced by complainants.)

12. Examine the two circulars marked "Complainants' Exhibits H and I," respectively, and state what they are and where you obtained them.

Ans. Exhibit H is an advertisement of John Berry, of Biddeford, Maine, of a device on which he holds a patent, October 27, 1882, advertised for sale by himself in the Druggists' Circular Advertising Pages January, 1883. I obtained it in Cleveland from the Druggists' Circular, published 36 Beekman street, New York city. Exhibit I is an advertisement of John Berry, of Biddeford, Maine, of his percolator, patented October 27, 1882, which advertisement was obtained by me from Strong, Cobb & Co., of Cleveland, Ohio, at their store, to whom it had been sent through the mails. I see from the office copy of the patent of Berry introduced into this case that the date above stated is a misprint for October 17, 1882.

(Said Exhibits H and I are here introduced by complainants.)

13. Please look at Complainants' Exhibit F and state how long that has been in your possession and if it embraces all of the features and parts of the model or is itself the model that went to the draughtsman in the preparation of your application for filing in the Patent Office of the United States.

Ans. The Exhibit F, with the exception of the rubber tubing, which is new, has been substantially the original model that went to the draughtsman in the preparation of my application for filing in the Patent Office of the United States. The perforated plate attached is a copy of one substantially identical that was originally soldered to the concave side or interior of the cup-shaped diaghragm from which the original has been broken off. The wire that has been passed through the loops of the container for the solid

31

is one similar to the original wire used for the same purpose, and which was made to pass through one of the perforations of the tin rod that was soldered to the aforesaid diaphragm for the purpose of more strongly assisting in the support of the diaphragm when held against the solid. The wire loops are shown in edge view in the original drawing.

Cross-examination by WILBUR F. LUNT, Esq., counsel for respondent:

X 14. Please examine Complainants' Exhibit A, Rosenwasser's patent, the drawings therein, and point out the several parts of the device known to you to be novel.

Ans. In the first place, consisting of all its parts, the whole combination of the elevated reservoir (G, Fig. 2) with the tube F, constricted inlet B, container A, the diaphragm (D, Fig. 1), and wide discharge outlet of said container (C, Figs. 1 and 2); secondly, of its parts, consisting in the container (A, Fig. 2) having a constricted inlet for liquids and a wide discharge outlet and filling inlet for solids and outlet for liquids after percolating through the solid contained within the container (A, Fig. 2) and held in place by the diaphragm (D, Fig. 1); also the novel part (D, Fig. 1), a diaphragm or plate to be placed against the solid within the container (A, Fig. 2) and held by suitable means.

(Respondent moves to strike out this last answer as irresponsive.)

X 15. Is the use of an elevated reservoir, in combination with a flexible tube and a chamber for containing the solids to be percolated, novel?

Ans. Some forms of such a combination may not be novel; others may.

X 16. Please describe the form of such a combination known to you to be old and not novel.

32 Ans. I have no such positive knowledge.

X 17. Please state what you mean by the statement that you have no such positive knowledge.

Ans. I have never seen such described old application either in public or private use.

X 18. Have you read descriptions of such a combination or device for percolating, or seen cuts showing such device, in any works relating to the science of pharmacy?

Ans. A device known as the "Squibb percolator" has been represented with an elevated reservoir, a syphon tube for carrying liquids to a percolator, and for percolating through solids within the percolator or container. This is the only definitely described device that I can recollect having seen.

X 19. Referring to the drawings in Complainants' Exhibit A, state whether the use of an elevated reservoir in combination with a tube and percolating chamber has been in use for many years for the purpose of obtaining hydraulic pressure upon the substance to be percolated.

Ans. Prior to the discovery and invention of the Rosenwasser percolator I have no knowledge of such use.

X 20. Does the drawing in Rosenwasser's letters patent show the use of more than one diaphragm for holding in place the permeable solid in the chambers of the percolator?

Ans. It does, substantially.

X 21. In what part of the specifications and drawings, and how are the diaphragms described and pointed out?

Ans. The upper diaphragm, against which the solid is packed into the percolator and which offers resistance to its further advancement, is not lettered but plainly seen in the drawing. It has one perforation or inlet for the liquid described in the specification at the mouth of the constricted inlet B. The second diaphragm is described in the specifications and in the drawings as placed against the drug, and is designated as D (Fig. 1)

X 22. Is the upper diaphragm mentioned in your last
33 answer distinct from or independent of the walls or top of the percolating chamber and separable?

Ans. It is not, but is fixed as an essential feature against which the solid is met with resistance.

X 23. What you claim to be the upper diaphragm is, in fact, the upper end of the cylindrical chamber of the percolating vessel, is it not?

Ans. It serves such a purpose, except at the place of its aperture, through which liquid is introduced and must permeate through the solid.

X 24. In practical use how is the drug which is introduced into the percolating chamber, when moistened and swelling, prevented from entering the tube through which the liquid is introduced from the reservoir into the percolating chamber in the Rosenwasser percolator?

Ans. By an old and universally practiced method of placing a cloth or other loose but closely woven porous substance against the mouth of the constricted inlet within the container, or by having the aperture of the constricted inlet smaller than the permeable solid through whose cells the liquid still may pass while itself acting as a preventive of such a result, under which circumstances it would not be necessary to so place a cloth or supplementary preventive of such swelling and clogging; also in the use of many substances, such as benzine and alcohol, such swelling does not take place. In some instances, like the action of a sponge when placed in alcohol, the substance to be filtered is liable to contract, thus not necessitating in all instances such procedure and not causing such result.

X 25. Does the percolating device in Complainants' Exhibit F show the use of more than one diaphragm, such as is described in the specifications of Rosenwasser's letters patent?

Ans. The device—Complainants' Exhibit F—shows the use of two diaphrams, the one described as D, Fig. 1 of the drawings, and
it also shows the use of the upper diaphram as exhibited in
34 the drawings and against which the permeable drug is placed within the container A.

X 26. Does the percolating device in Complainants' Exhibit F show the use of more than one diaphram, such as is described in the printed description of Rosenwasser's letters patent?

Ans. It shows the use of a diaphram with one constricted inlet for liquids; it describes the placing of filtering substances against this diaphragm, in the printing of said specifications and Exhibit

F also shows the use of another diaphragm, D, in said specifications, as is described.

X 27. Please state the particular lines by number in the printed description of said specifications where any other diaphragm than the one used at the lower end of the chamber is described or alluded to.

Ans. Beginning with line 58 is described the diaphragm containing one opening for liquid, ending with the line 65. I also consider reference to the drawings, beginning line 18 and ending with line 21, as necessarily showing the diaphragm described as the one with one constricted opening or inlet for liquids.

X 28. State whether or not Complainants' Exhibit F is the model used by the draughtsman in preparing the drawings annexed to Rosenwasser's patent, Complainants' Exhibit A.

Ans. The reservoir is the original one used; the container for solids is the original one used; the cup-shaped diaphragm within container is the original one used; the perforated tin attached to the exhibit is one essentially the same as the one originally soldered to the concave or interior surface of the cup-shaped diaphragm. The wire used in Exhibit F is similar to a bar used to act as support to any immoderate pressure on said diaphragm, and which was passed through first one loop of the container, then through a parallel perforation in the tin, and lastly through the opposite loop, forming a supporting beam. The tubing is similar to one originally used.

35 X 29. State whether or not the diaphragm marked D in the drawing Complainants' Exhibit A is a perforated disk soldered to the end — a cylindrical ring in Complainants' Exhibit F.

Ans. It is.

X 30. Do you consider the especial method or means of securing the diaphragm D in place against the drug an essential element in Rosenwasser's device and invention, as described in complainants' patent, Exhibit A?,

Ans. I consider the especial method described as essential.

X 31. Will you please read from Complainants' Exhibit A the description of that method and point out the lines containing it?

Ans. Beginning line 30 and ending 36, as follows:

"D is a perforated plate. This plate may, if desired, be replaced by any porous diaphragm or interposing substance, such as filter paper, cloth, pumice or the like. This is to prevent the drug from escaping from the percolator during its use and it is to be secured in position by suitable means."

Also line 67, beginning as follows:

"A is charged in the usual manner through its enlarged mouth C, as already specified."

Also line 81, as follows:

"This pressure, as may readily be seen, can be nicely adjusted and varied at pleasure to suit the requirements of any case."

X 32. What is the suitable means referred to in line 36, men-

tioned in your last answer, and where is the suitable means described in said specifications?

Ans. The suitable means is one both mechanical and physical. The perforated plate D is the suitable means described, offering physical obstruction to the passage of the solid as well as mechanical.

X 33. Will you please to describe specifically and particularly the device by which the plate D, in Fig. 1—Complainants' Exhibit A—is held in position against the drug or contents of the container, as shown in any part of said letters patent?

36

Ans. By means of the cylindrical and lateral resistance of the diaphragm and cylindrical ring against the inner surface of the container, both on account of its mechanical construction, as represented, and the physical resistance, as stated.

(Adjourned to November 3, 10 a. m.)

NOVEMBER 3, 1883.

X 34. In your letters patent "Complainants' Exhibit A" you claim a combination, with a vessel, G, and adjustable tube F, of a percolator, A, having a large filling and discharge orifice at its lower end and a restricted opening, B, at its upper end, with which connects the lower end of the adjustable tube or pipe, substantially as set forth. Referring to that claim, will you state whether the percolator A is substantially in form like an ordinary funnel?

Ans. It is not.

X 35. Please state how it differs in form from an ordinary funnel, save that the shoulder next the beak is set at a right angle with the walls of the funnel instead of at a sloping angle.

Ans. In the fact that in an ordinary funnel belonging to the same as a part there is only one diaphragm against which the drug can be placed, and this diaphragm is fixed, whereas in Complainants' Exhibit A the percolator or container is provided with an additional diaphragm to be placed against the drug when the latter is placed within said container and secured by suitable means for purposes explained and set forth in the specifications of the patent.

X 36. Then the percolator or container in Complainants' Exhibit A differs from the form of an ordinary funnel in the insertion of a diaphragm at the entrance or large end of the funnel chiefly, does it not?

37

Ans. It differs from it in the insertion of the diaphragm through the entrance or wide discharge end of container A to a position reached by the drug and in being adjusted thereto by suitable means.

X 37. If the container A is detached from the tube F and inverted is it not substantially in form and capabilities of use identical with a common funnel?

Ans. It is not.

X 38. Please state specifically how it varies in form and capabilities of use from the common or ordinary shaped funnel.

Ans. In having a diaphragm that is placed against the drug and adjusted thereto which does not exist in an ordinary funnel. Its

capabilities of use are therefore more or less different from that of a funnel without such diaphragm. The principal capability of such a diaphragm would be that if upset and properly adjusted the solid material in the container could not, as is described in the specifications, escape.

X 39. Will you please state whether or not the complainants at or about the time of the granting of Rosenwasser's patent, Exhibit A, manufactured and sold a percolating device constructed in manner and form as described in said letters patent?

Ans. Yes.

X 40. How large a number?

Ans. I believe the first lot manufactured and sold was a lot of fifty of various sizes.

X 41. Were those manufactured and sold with the lower end of the container left open, as shown in the drawings of Exhibit A, with no provision for closing it by a cap?

Ans. A cap in common use for collecting the drippings of any large discharge orifice was provided with each such device sold for the special convenience of the drug trade to whom said contrivances were sold.

38 X 42. Was it or not fitted to and connected therewith as a part of the body of the container?

Ans. It was fitted to the container as a separable and non-essential part.

X 43. How was the diaphragm supported and kept in place in the containers last mentioned?

Ans. The first three or four of this lot sold were supported by a diaphragm, as in Complainants' Exhibit A; the balance by means of frictional resistance to the sides of said container.

X 44. Please state how the diaphragm in Exhibit A is supported in the first three or four referred to in your last answer.

Ans. By having connected with the wide discharge end of the container A two opposite metallic loops. The diaphragm plate at its center had soldered to it a metallic cylinder projecting outward when placed within the container for the purpose of adjustment to the solid within the container. Said metallic cylinder had parallel and opposite perforations at intervals throughout the length of the cylinder. A wire or metallic rod, being passed through first one loop of the container, was next passed through the aperture nearest it or parallel to it in the supporting cylinder, then through the other parallel and opposite aperture of the supporting cylinder, and lastly through the other loop of the container A, thus forming a beam supporting the supporting cylinder that was soldered to the lower end at right angles to the plate or diaphragm at its center.

X 45. What was the diameter of the supporting cylinder as compared to the diameter of the diaphragm?

Ans. About four inches was the diameter of the diaphragm; one inch the diameter of the supporting cylinder.

X 46. Is such supporting cylinder shown in your Exhibit A anywhere?

Ans. In Exhibit A the loops are shown in Fig. 1 in side view,

through which ran the supporting rod. Another cylinder of equal diameter with the diaphragm supports the same by close contact with the side of the container.

39 (Respondent moves that the last answer be stricken out as irresponsive.)

X 47. Will you please look at "Respondent's Exhibit 1, A. H. D., Ex'r," and state whether or not it was the first advertisement of your percolator published in the Druggists' Circular, a journal printed in New York?

Ans. It was not, as is stated in the advertisement itself; but my percolator was advertised in the November number of the Druggists' Circular, 1881.

X 48. State whether or not the advertisement—Respondent's Exhibit 1—was published by you on or about the date of the granting of your patent, Exhibit A.

Ans. It was about that time.

X 49. Are any loops shown in the cut of the percolator in said advertisement for the purpose of supporting the diaphragm or any cylinder connected therewith?

Ans. There are not.

X. 50. State whether or not the cut in Respondent's Exhibit 1 shows clearly and fully the percolator as first manufactured and sold by you under your letters patent.

Ans. The cut does not fully represent the entire and exact apparatus first sold, but the essential features of the same.

X 51. How does it vary from the percolator as first sold?

Ans. The most of the percolators as first sold vary from the cut by having the diaphragm held in place by purely frictional resistance.

X 52. You say the most of the percolators. How did the remainder vary, if at all, from the percolator as shown in the cut?

Ans. The diaphragm was supported as described in answer to X int. 44.

X 53. The cut in Respondent's Exhibit 1 shows a lower end of the percolator to be screw-threaded. If such was the construc-
40 tion of the first percolators how were you able to attach to the cylinder of the container any loops through which to pass a rod for the purpose of supporting the diaphragm?

Ans. Such were not the first percolators, nor were such ever sold.

X 54. Referring to "Respondent's Exhibit 2, A. H. D., Ex'r," does that exhibit show the forms of your percolator as advertised in the Druggists' Circular in August, 1882?

Ans. It shows the form of such percolator when in use for percolation to the left and the method of introducing the drug and diaphragm of the container to the right of said advertisement.

X 55. Is the advertisement, Respondent's Exhibit 2, an advertisement which you published?

Ans. It is.

X 56. Will you please examine "Respondent's Exhibit 3, A. H.

D., Ex'r," and state whether or not it is a circular and advertisement issued by you?

Ans. It is.

X 57. When?

Ans. Within probably a year after they were first advertised.

X 58. Have you not changed the form of the body of your percolator so as to place a concave bottom thereto and a top flat at right angles with the walls of the cylinder thereof?

Ans. A cap piece fitting over the discharge end of the container A for directing the liquid discharged from the same into narrow-mouthed vessels for the convenience of the drug trade was on the first lot made flat-bottomed, with a narrow aperture in its center and constricted outlet or tube soldered around the aperture. This flat bottom was changed to a concave one, after the first lot was sold, for the still further convenience of the druggists.

(Adjourned to 3 p. m.)

41 3 P. M.

X 59. Have you manufactured and sold any percolators complete without closing the lower end of the container with a cap having a constricted outlet similar to the constricted inlet at the top of the container?

Ans. No, sir.

X 60. Is the use of the container without such cap piece practical when a volatile liquid is used for the menstruum?

Ans. It is. I have often used the same.

X 61. Were you not obliged to use in connection with it some arrangement which answered the purpose of a funnel placed near the lower end of the percolator?

Ans. I was not.

X 62. Did you endeavor to use any means to prevent evaporation of the menstruum as it passed from the percolator; if so, what?

Ans. The passage was so rapid and the operation so rapidly finished that the resulting liquid was simply collected in an ordinary receiver.

X 63. And no attempt being made to prevent evaporation while it was being percolated?

Ans. It was practically unnecessary to attempt it.

X 64. Is your percolating vessel, as manufactured and sold by you, a closed cylindrical vessel having constricted openings and tubes connected therewith at each end?

Ans. It is.

X 65. The percolating vessel described in your letters patent, Complainants' Exhibit A, describes a cylindrical vessel open at one end and closed at the opposite end, save a constricted opening and tube connected therewith, does it not?

Ans. That is part of my percolating vessel as described in my patent.

X 65½. Does or not that describe completely the percolating

42 vessel, excepting its interior arrangement, as in Fig. 1, Exhibit A?

Ans. It does.

X 66. Please state whether or not the container or percolating vessel shown in Fig. 1, Exhibit A, is an ordinary percolator, such as has been in common use for many years, save and excepting therefrom the diaphragm.

Ans. It is, when inverted; but it is not then my containing vessel; and as it is when used for the purpose of the invention, it is not a common percolator.

X 67. Does the inversion of the vessel last referred to and the addition of the diaphragm constitute the only novel principle of your invention, when combined with a flexible tube and an elevated reservoir?

Ans. It constitutes a novel feature when so constructed. I consider the wide filling and discharge opening for solids and the constricted inlet for the liquid, with a diaphragm suitably placed and to be held against the solid contained therein, with the combination of the elevated reservoir and tube, to be novel.

(Counsel for respondent moves to strike out this answer as irresponsive.)

X 68. Is the wide opening for solids different from the opening for solids in any common percolator?

Ans. It is of the same nature.

X 69. Is it of the same form?

Ans. It is.

X 70. In practical use of the percolating vessel, Fig. 1, Exhibit A, did you find it necessary to insert within the vessel, near the constricted inlet, a perforated diaphragm of a size corresponding with the diameter of the interior of the cylindrical vessel?

Ans. For the purposes of the drug trade, I did.

X 71. Why?

Ans. To prevent the disturbance of finely ground drugs when impinged by liquid from above the drug, and also to pre-

43 vent the clogging of the aperture in the upper diaphragm through which the liquid passed through its one central constricted inlet.

X 72. The upper diaphragm, to which you have alluded in your last answer, is the end wall of the cylindrical vessel called the container, is it not?

Ans. It is.

X 73. Is the description of your percolator in Respondent's Exhibit 2, next following the words "Why called inverted press percolator" and ending with the words at the end of the first paragraph, to wit: "enters the drug," taken in connection with the cuts shown in said exhibit, a description of your percolator and the manner of using it, published by you?

Ans. It is.

X 74. Will you please look at Respondent's Exhibits 4 and 5 and state whether or not they are cuts of your percolator, showing

the form which you have manufactured and sold since the granting of your letters patent?

Ans. They are.

X 75. State whether or not those cuts show that the diaphragm placed against the solid in the container is supported by a boss on the under side of the diaphragm, to which is affixed a spindle or rod passing through a cross-bar, which is held in position by a set screw in the cross-bar, and which cross-bar is held in position in the lower end by lugs into which it locks.

Ans. The cuts do.

X 76. Do or not the cuts in Respondent's Exhibits 4 and 5, show a second diaphragm secured in position within the cylinder separate and detached from the top, leaving a chamber between the diaphragm and top of container?

Ans. The diaphragm is pressed close as practicable against the upper or top surface of the container and directly opposite and facing it, and it is so represented in the cut.

X 77. Is the diaphragm placed against the top or is a cham-
44 ber left between the diaphragm and the top in the cuts of Exhibits 4 and 5?

Ans. I see no such chamber in the cuts. The diaphragm is placed against the top.

X 78. How is that diaphragm last mentioned supported and kept in place?

Ans. It becomes fixed when the solid is packed against it and the latter held in place by suitable means.

X 79. When the solid is packed between the diaphragms what holds the upper diaphragms within the cylinder?

Ans. The solid on one side and the closed top on the other.

NATHAN ROSENWASSER.

Attest: A. H. DAVIS, *Examiner.*

Admission as to Exhibit G.

MAY 12, 1884.

It is admitted in behalf of respondent that Exhibit "G" was sold in Maine to S. Anderson by John Berry, the respondent, before the filing of complainants' bill.

W. F. LUNT,
Respondent's Counsel.

COMPLAINANTS' EXHIBIT E. A. H. D., Ex'r.

UNITED STATES PATENT OFFICE.

JOHN BERRY, of Biddeford, Maine.

Percolator.

Specification forming part of Letters Patent No. 266,081, dated Oct. 17, 1882; application filed May 31, 1882. (No model.)

To all whom it may concern:

Be it known that I, John Berry, of Biddeford, in the county
45 of York and State of Maine, have invented a new and useful improvement in filters and percolators, and I do hereby declare that the following is a full, clear, and exact description of the same.

My invention relates to an improvement in the construction of percolators intended especially for the use of druggists and chemists in compounding tinctures and fluid extracts, but adapted for use as an ordinary filter for purifying water and other liquids.

The invention consists in the peculiar construction of the filtering chamber and diaphragms and the novel adjustment of the latter, and also in certain details of construction, as will be more fully hereinafter described.

In the drawings figure 1 is an elevation and Fig. 2 a central vertical section.

The outside body or shell of the filter is represented at A, and is a metallic vessel of cylindrical form, having a closed upper end and provided with a close-fitting telescoping cover, B. The joint between the cover and the shell A is closed by a broad rubber packing ring, C, which prevents evaporation at that point. A pipe, *c*, preferably of rubber tubing, conducts the alcohol or other liquid from a reservoir (hereinafter described) above the percolator to the same, and a similar pipe, *d*, is connected to a perforation in the cover B, and serves as a discharge pipe to convey the fluid extracts to a bottle or other receptacle.

The interior of the filter is shown in section in Fig. 2. D D are two concave diaphragms of circular shape, which fit closely within the cylinder A and are finely perforated. Centrally fixed to each diaphragm is a threaded boss, *e f*. By means of these threaded bosses the diaphragms D D are mounted upon a central rod, E, which has a right-hand screw, *g*, at one end and a left-hand screw, *h*, at the other, engaging respectively with the bosses *e f*, so that if the screw rod be turned the diaphragms will be caused to approach toward or recede from each other, according to the direction
46 given to the rod. The rod is provided at one end with a removable wrench or hand wheel by which it is turned with sufficient space to hold or rest the diaphragm. The screw rod and diaphragms are supported within the cylinder A by two or more hooked projections, *i*, secured to the convex side of one of the dia-

phragms, which engage with two or more studs, *k*, in the wall of the cylinder, as shown in Fig. 2. By slightly turning the diaphragm so that the hooks and studs are brought out of line the rod and diaphragm are disengaged.

In charging or filling the filter the cover is removed from the cylinder and one of the diaphragms from the rod. Any suitable quantity of any drug is placed on the diaphragm D. The second diaphragm D is then placed upon the rod and the wrench applied, which causes the diaphragms to approach each other in order to compress the material between them. The diaphragm D having been previously locked in place, as before described, the cover B is replaced. The cylinder A is now turned or reversed, so that the cover forms the bottom, the filter being suspended from the studs, and the inlet and discharge tubes are connected. The alcohol or other liquid is permitted to flow into the chamber A, percolating through the material between the diaphragms and escaping through the discharge pipe. When the liquid no longer flows freely or the supply is shut off the diaphragms are forced closely together to press out the liquid absorbed by the material. In this operation I use the apparatus represented in Fig. 1, wherein the vessel for containing the alcohol, water, or other materials to be charged or filtered is shown partly broken away. This vessel may be suspended, if desired, or otherwise supported, and is provided with a check valve at its top (not shown). The lower or discharge end of this vessel is connected to the rubber inlet pipe *c*, connected to the percolator, the admission of liquid to the pipe and percolator being regulated by cocks *m n*. The liquid thus admitted to the percolator is
47 subjected to the action of the drug contained therein, and then escapes by the outlet pipe *d*, connected to the discharge opening of the percolator. This pipe is of rubber and communicates with a glass tube, *o*, passing through the stopper of a receiver, R. As the receiver fills the air escapes through a tube, P, extending through the stopper beside the tube *o*.

Although I have described this device as particularly applicable to the use of druggists and chemists in compounding fluid extracts, &c., it is evident that by the use of charcoal or other filtering medium, instead of certain drugs, water may be filtered and purified in the same manner.

The advantages of the device lie in the simplicity and the ease and readiness with which it can be taken apart for filling and cleaning, and in the great saving of alcohol while in operation—first, because it is perfectly secure from evaporation from the air inlet through the screw cap of the reservoir, even to the air escape through the rubber stopper of the receiving bottle or vessel, as set forth; and, second, because expansion of the drug and unnecessary absorption and holding in suspension of the menstruum are prevented, for in my invention, while the tendency of the drug to expand is the same, the diaphragm prevents it, and the menstruum, in passing through the drug, by an inward pressure through the heart of the drug cells produces a percolate far superior to any obtained in any other way, even with a larger quantity of alcohol.

Having thus described my invention, what I claim is—

1. Combined with a cylindrical vessel, A, the central rod E, having screw threads of opposite pitch at its ends, and the perforated diaphragms D D, mounted upon the opposite ends of said rod and having correspondingly screw-threaded hubs or bosses.

2. A percolating vessel, A, having two independently removable perforated diaphragms adjustably mounted upon a common rod and suspended within the said vessel.

48 In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JOHN BERRY.

Witnesses:

J. G. GARLAND.
H. P. GARLAND.

COMPLAINANTS' EXHIBIT H. A. H. D., Ex'r.

22 *Druggists' Circular, Advertising Pages. Jan.*, 1883.

Berry's pressure percolator.

Patented October 27, 1882.

This is the best and only practical pressure percolator patented in the United States or Canada; is ingenious in its simplicity, wonderful in its saving of time, labor, and alcohol, and perfect in its operation.

Investigate closely all other kinds before examining Berry's. Its superiority in every way will be more clearly seen.

Only one reservoir and two percolators are required, and constitute a set (see Figs. 1 and 2), and is a complete outfit for any retail drug store. With this set from one to eight pints of fluid extract, one pint to eight gallons of tincture, and one to fifteen gallons of bitters, elixirs, cordials, etc., can be easily made without loss of alcohol by evaporation or absorption, because it is (see Fig. 1) perfectly air-tight from the screw cap of the reservoir to the air escape (P) of the receiving bottle, and the alcohol absorbed by the drug is forced out by using water in the reservoir. Fig. 1 represents the percolator as seen when in use. Fig. 2 shows the percolator proper in central vertical sections. The rod (E) is equally divided with screw threads of opposite pitch, right-hand thread from E to E, and left-hand
49 thread from E to the wrench end. By turning the rod to the right the diaphragms rapidly approach each other and meet at the center (E). By turning to the left they recede from each other to each end of the rod. (The diaphragms do not turn; the rod only is turned.) By this simple combination it is readily perceived material of any depth can be firmly held or pressed between the diaphragms. These cannot slip or move from position upon the rod, as would be the case with a smooth rod for a support when sub-

jected to the powerful expansion of the drug between them. With this arrangement the certainty of the peculiar action of the drug is assured as the menstruum passes through it, for the expansion of the drug being prevented, a power within itself is generated, compressing itself and forcing the menstruum into and through the fine grains of the drug. The diaphragms and rod are suspended upon the studs (K), and can be taken from and replaced within the cylinder in one minute. The drug is placed in and removed as conveniently as with a glass percolator, with nothing in the way to prevent a free flow of the percolate. Fluid extracts, tinctures, etc., made by this process are cold-forced, of a superior quality, and true to name in color, taste, and odor. They weigh more to the pint than those made in the ordinary way. Sufficient menstruum can be placed in the reservoir at one time to exhaust the drug, so that the operation can proceed to the end without refilling or further attention. The cost of any preparation can be computed beforehand by adding the cost of articles as specified. All waste and bother with a tincture press is avoided and no private formulas are necessary.

Tinctures and fluid extracts of the new pharmacopœa can be made with this percolator at a saving of one to two hundred per cent. Full directions are sent with each set. Write for circular giving details in full. Agents will be appointed in every State in the Union and in Canada, from whom the same terms can be had as though sent direct.

Price per set, complete, ready for use, for tin, $15.00; for
50 nickel, $20.00. We warrant these percolators or money will be refunded. They are made of the very best heavy stock and will last for years.

In thirty days one will pay for itself. All orders received during the month of January, '83, will be sent express paid to your door. No druggist can afford to be without one. To those who think their business would not require the larger or second size percolator the first size, with a reservoir, will be sent if so desired. Those who prepare and bottle preparations of their own in quantities of five or more gallons at one time would require the second size, and the work can be performed in one-quarter of the time usually employed.

Address, JOHN BERRY,
147 Main Street, Biddeford, Me.

COMPLAINANTS' EXHIBIT I. A. H. D., Ex'r.

Important to Every Druggist.

Patented Oct. 27, 1882.

(Cut.)

Length of cylinder body, 12 in.
Diameter " " 7 in.
Length of rod, 12 in.
Diameter, ⅝ in.
Length of pipe end, top, 4 in.
" " " bottom, 3 in.

Percolation made easy with Berry's Pressure Percolator. Solid facts for your consideration. Money, time, labor saved and best results gained by using one.

51 How fifty to one hundred per cent. can be saved in compounding your tinctures and fluid extracts is worth investigation. How it can be successfully accomplished and at the same time place on your shelves preparations of more uniformity and strength, containing the virtue of the material and not having it left behind in the material, as is too often the case, are facts of great importance to every druggist and manufacturer of pharmaceutical products in the land. A careful perusal of this descriptive circular will inform you how it can be quite easily accomplished. The every-day trial and losses with a common conical percolator, the work and bother with a tincture press, is an experience familiar to all, for the daily routine of one laboratory is but the repetition of another, modified only by the surroundings.

Fifteen years of active life have been spent by the writer as an apothecary, and during the past two years he has been experimenting to overcome some of the obstacles in the way of successful percolating. To prevent the unnecessary expansion of the material and secure a proper flow of the menstruum were the objects in view. To solve this problem would furnish all that could be desired, for the laws of nature would do the rest. After many fruitless experiments the apparatus, as shown in Figs. 1 and 2, was constructed. How well it answers the purpose for which it was designed I leave for you to say after a close examination and explanation. Fig. 2 represents the percolator proper in central vertical sections. Fig. 1 shows the apparatus as seen when in operation. A represents the cylinder, made of suitable material (Fig. 2); E the central rod, having screw-threads of opposite pitch—right-hand thread from E to E and left-hand thread from E to an adjustable hand wrench below. D D are two concave perforated diaphragms with threaded bosses at their centers corresponding with the threads on its own end of the rod, so that by turning the rod to the right at the wrench the diaphragms approach, or by turning to the left they recede

52 from each other. The diaphragms do not turn; the rod only is turned. B is a telescoping cover fitting closely on the bottom. The drug is held firmly between the diaphragms and all is suspended within the cylinder by means of the locks and studs K. When in operation the menstruum is placed in the reservoir (Fig. 1) and elevated above the percolator by means of a cord and pulley, so that it can be lowered at will. The menstruum is conducted to the percolator through the rubber pipe C and the flow is regulated by the stop-cock N. As the menstruum enters the drug the expansion is prevented by the diaphragms and the force is spent within the drug, forcing the liquid into and through the minute cells of the grain of the drug, followed in time by a fresh supply, until the drug is exhausted of its principle, producing a better percolate with a less quantity of menstruum than can be obtained in any other way. The novelty and convenience of this arrangement cannot help pleasing the most fastidious upon observing it in operation. With this apparatus it is not necessary to allow all the menstruum to pass through the drug. When the percolate drops from the drug colorless, as is the case after using from one-fourth to one-third of the liquid, disconnect the rubber pipe from the percolator and allow the remaining liquid in the reservoir to flow into the receiving bottle. At this particular stage of the operation the great convenience of this percolator is very valuable. Instead of resorting to the tincture press and an extra quantity of alcohol to complete the prescribed amount for a finished percolate, fill the reservoir with water, regulate the flow with the stop-cock, allowing the water to flow into the drug. The hydraulic pressure thus produced forces the water into the drug cells, driving before it the absorbed menstruum, water taking its place. Continue the operation until the receiving bottle contains the required amount for a finished percolate. Close the stop-cock and remove the receiving bottle. This operation should not be allowed to proceed faster than four or five drops to the second.

53 To illustrate with tincture of arnica: Use as directed in U. S. D.—twenty-four troy ounces for one gallon of menstruum. Moisten the ground arnica with a portion taken from the gallon, pack into the percolator, and pour the remaining menstruum into the reservoir. Allow the menstruum to flow into the arnica. When the percolate ceases to drop into the receiving bottle it will be found that about one-half of the menstruum is held in the arnica by absorption. Now place water in the reservoir, regulate the flow with the stop-cock, and continue the operation until the quantity necessary to complete one gallon is collected. So nicely does this hydraulic pressure proceed that by collecting, at any stage of the operation, a few drops of the percolate on a piece of paper it will be found to very readily ignite, showing a non-admixture of water from above, or suspend the operation when a part only of the absorbed menstruum has been forced out, remove the lower diaphragm, and, with a sharp blow into the upper orifice of the percolator, the contents can be forced out *en masse*. The dividing line between the water and the menstruum can be plainly seen. Again,

if the amount recovered by the water pressure is four pints, by measuring the water in the reservoir it will be found that four pints have been consumed—a very desirable exchange. Tinctures made with this percolator are more reliable, being uniform in strength and of a deeper color. It completely exhausts the drug of its principle, something that cannot be said of an open percolator, and the cost of any tincture can be so nicely ascertained by adding the cost of the specified quantities. The evaporation is prevented by means of the screw cap on the reservoir, and all waste by absorption is counteracted by the hydraulic pressure.

Fluid extracts of a superior quality can be manufactured with this percolator that will bear comparison with any made, and at the immense saving of from one to two hundred per cent. A quantity of menstruum is required only to saturate the drug before
54 subjecting it to the hydraulic pressure. No evaporation is necessary, consequently the preparations do not have a cooked smell, nor is their virtue impaired by heat. A fluid extract made by evaporation, having a very black color, does not indicate strength. The heat employed blackens it, besides making it more or less inert. To obtain a fluid extract true to its name a menstruum should be used that will extract from the drug its element; otherwise your preparation is wanting, made elegant, perhaps, at the expense of a portion left out. Preparations made with this percolator are cold-forced.

Eighteen to twenty fluid ounces of menstruum to the troy pound is all that is required. Moisten the ground material with six ounces taken from this quantity, allow it to stand from twenty-four to forty-eight hours in a closed vessel, pack into the percolator, and pour the remaining menstruum into the reservoir. When all the liquid has passed into the drug, continue the operation with water in the reservoir until sixteen fluid ounces are obtained. The moistened drug, while standing, admits of free capillary attraction, and becomes softened, so that when subjected to the balance of the menstruum and the hydraulic pressure it readily yields its principle.

If that portion of the twenty ounces of menstruum held by absorption should be displaced with more of the same strength the result would not be the same as with water, because the difference between the expansive power of water and the menstruum used, aided by the hydraulic force, is sufficient to give the particles of the drug a new impulse, which, being confined, again acts upon itself, forcing and compressing as the water proceeds downward. Unlike dry or surface pressure, as with a tincture-press the water passes into and through the cellular mass. To illustrate with fluid extract or sarsaparilla: Ground sarsaparilla root, No. 40 powder, one pound troy; menstruum, see Ph. v82, twenty fluid ounces; let it stand twenty-four hours, then pack into the percolator and pour the remaining fourteen ounces into the reservoir. When all has passed into the drug proceed with water in the reservoir, collecting
55 slowly, drop by drop, until sixteen fluid ounces are obtained.

In this manner any fluid extract can be manufactured, as required, from a rare or common drug, varying the strength of the

menstruum as the case demands. Fluids extracts made by this process weigh more to the pint than those made by repercolation and evaporation by one-half to two ounces.

The cost of fluid extracts made with these percolators is reduced one-half, and the saving made on a few pints will pay the cost of one, not to mention the saving made on tinctures, bitters, elixirs, and private formulas. No extra quantity of alcohol is required, so the cost of any preparation can be ascertained beforehand by simply adding the cost of the articles as specified. The simplicity of its parts makes it doubly valuable. A cylinder, one rod only, and two perforated diaphragms constitute this percolator. Independent and removable, perfect in the mechancial movement, easily taken apart, cleaned, and put together in less than a minute. No liability of the diaphragms slipping on the rod, thus losing the peculiar action of the material between them. There is no cross-bar to prevent the free flow of the percolate, no rod projecting below the cylinder, in the way. After the operation the drug does not have to be dug out of the percolator, consuming time and staining the hands. After removing the lower diaphragm one sharp blow into the orifice of the cylinder will force out all in one compact mass.

Two percolators, with one reservoir, constitute a set and is an outfit for any retail drug store. The No. 1 will hold and percolate from one to twenty ounces of material. The No. 2 will hold from one to eight pounds of material.

With the No. 1 one pint of fluid extract and one gallon or less of a tincture can be made. With the No. 2 two to eight pints of fluid extract, two to eight gallons of tincture, and fifteen to twenty gallons of bitters or elixirs can be made. One reservoir answers for both sizes, and sufficient menstruum can be put into it at one
56 time to exhaust the drug, avoiding the trouble of often refilling. By this method, with the flow regulated, it can be left, and will take care of itself until ready for the water-pressure. In making ten or fifteen gallons of bitters exhaust the strength of the material with a portion of the menstruum; force out the menstruum, absorbed with water, add the balance of the menstruum to the percolate. The result is a strong, clear preparation ready for bottling. This is done at a great saving and in considerable less time than in any other way. To realize the value of this percolator one should use it. In thirty days it will pay for itself, and the labor saved will be appreciated by all. No drug store is so small that it can afford to be without one. They are as clean and pure as glass. With a little care they will last for years. It is the most valuable article of drug-store furniture in which you can invest. Full directions sent with the percolator, and any size can be manufactured up to two hundred pounds' capacity of suitable material, and a boy twelve years old can work it.

The cylinders are made of extra heavy planished tin, nickel-plated tin, and planished copper. Price, $15 per set for planished tin, $20 per set for nickel-plated tin or planished copper.

See druggists' circular for list of firms handling this percolator, from whom the same terms can be obtained as though ordered

direct. Everything warranted to be as represented or money refunded.

Put away those tincture-presses
That we all have used so long,
We shall need them here no longer,
For their day has come and gone.

All communications should be addressed to

JOHN BERRY,
Pharmacist, 147 *Main Street, Biddeford, Me.*

57 *Evidence for Respondent, Taken Pursuant to the 67th Rule of the Supreme Court of the United States, in Equity, as Amended, Before me, A. H. Davis, Examiner.*

PORTLAND, *Nov.* 5, 1883.

Present: William Henry Clifford, Esq., counsel for complainants; Wilbur F. Lunt., Esq., counsel for respondent.

(Counsel for respondent here introduces exhibits marked as follows: "Respondent's Exhibits 1, 2, 3, 4, and 5," respectively, being the circulars, cuts, and advertisements identified by complainant in his deposition.)

Deposition of John Berry.

Direct examination by WILBUR F. LUNT, Esq, counsel for respondent:

Int. 1. State your name, age, residence, and occupation.

Ans. John Berry; 36 years old; Biddeford, Me.; pharmacist.

2. Are you the respondent in the suit Rosenwasser *et al. v.* John Berry?

Ans. I am.

3. How long have you been engaged in the business of pharmacist?

Ans. Sixteen years.

58 4. Are you a member of any pharmaceutical or scientific society or association?

Ans. I am a member of the U. S. Retail Association of Pharmacists and am licensed by the pharmaceutical board of examiners under the laws of the State of Maine.

5. State whether or not during the period you have been engaged in pharmacy you have made a study of the theory and practice of the preparation of fluid extracts of various substances used in medicine and the arts.

Ans. I have.

6. To what extent?

Ans. To the extent my business afforded during all the time I have been in business.

7. State whether or not your business was sufficiently extensive to require more or less of your attention almost continually—I mean to this branch of it—during the time you have mentioned.

Ans. As I have manufactured nearly all of the important preparations required, it has taken my undivided attention.

8. Have you during all the period of sixteen years used any apparatus or contrivance for obtaining extracts from drugs and other substances by percolation?

Ans. I have.

9. Have you during that period investigated by reading and study the various methods and different kinds of apparatus used for the purpose of obtaining extracts by percolation?

Ans. I have.

10. Will you please name any works used or referred to by pharmacists relating to the methods used in percolating drugs?

Ans. The U. S. Dispensatory, ninth edition, p. 784; thirteenth ed., pp. 932, 933; fourteenth ed., pp. 972, 973; Parish's Practical Pharmacy, published 1867, 3d edition, p. 135; Phillipp Lorenzo Geiger's Pharmacy, p. 1, and citations, embraced in several editions; also Encyclopædia Britannica, vol. 9, p. 167, printed by
59 Scribner's Sons, N. Y., 1879; also Ures' Dictionary of Arts and Manufactures, vol. 2, pp. 370, 372, pub. 1878.

(Counsel for respondent offers the above works and introduces the same in evidence, as above referred to, and it is agreed that the same may be read and used at the hearing of this case and need not be printed.)

(Counsel for respondent also introduces English letters patent granted Edward Loisel Nov. 10, 1854, No. 2387, for improvements in obtaining infusions or extracts from various substances, marked "Respondent's Exhibit 6, A. H. D., Ex'r.")

(Also copies of letters patent of the United States to Samuel Woolston and William Corfield, No. 100,232, dated February 27, 1870, for improvement in reversible percolators, marked "Respondent's Exhibit 7, A. H. D., Ex'r.")

(Also copies of letters patent of the United States to Albert Merrill, No. 104,181, dated June 14, 1870, for improvement in percolators, marked "Respondent's Exhibit 8, A. H. D., Ex'r.")

11. Are you the patentee in letters patent of the United States issued to John Berry, No. 266,081, dated October 17, 1882, for a percolator, a copy of which is marked "Complainants' Exhibit E, A. H. D., Ex'r?

Ans. I am.

12. State whether or not the principle and method of applying the liquid or menstruum to drugs and obtaining pressure by elevating a column of liquid so applied to the drugs confined in some receptacle is new or old.

Ans. It is old.

13. State whether or not the obtaining pressure by elevating the column of liquid is a well-known or elementary principle in hydraulics.

Ans. Yes; it is.

14. State the title of any work describing such principle and its application.

Ans. Norton's Elements of Physics, copyrighted in 1875,
60 published by Van Antwerp, Bragg & Co., Cincinnati and New York, page 95.

(Respondent introduces said work to be used and referred to at the hearing, and it is agreed that the same need not be printed.)

(Respondent introduces a metallic vessel, marked "Respondent's Exhibit 9, A. H. D., Ex'r.")

15. Will you look at Respondent's Exhibit 9 and state what it is, and whether or not it is the same as is described in the U. S. Dispensatory, to which reference has been made by you?

Ans. It is one of Boullay's filters or percolators described in said U. S. Dispensatory.

16. State whether or not you have had it in use. If so, when?

Ans. Yes; ten years ago.

17. State whether or not you used diaphragms with it.

Ans. I did.

18. State whether or not the Boullay percolator was used many years ago with a cap applied so that a column of liquid could be directed against the solid contents thereof.

Ans. It was.

19. Will you please describe the form and method of using the percolator described in your letters patent and designate what portions of it in form or principle are new and what are old and well-known forms in public and common use for very many years?

Ans. The exterior form and arrangement of my percolating chamber is similar to that described in the U. S. Dispensatory above named. The interior arrangement and device for holding the drug is the only new invention and improvement over old and well-known forms and devices. The following is a brief description of my invention, which is shown in the cut of "Complainants' Exhibit I:" The body of the percolating vessel, ordinarily made of metal, is
61 cylindrical in form, semi-funnel shaped at both ends. This cylinder is constructed in two parts, in such a manner that it can be opened for the purpose of filling for use—the two parts telescoping upon each other. When closed for use, as shown in said Exhibit I, the interior arrangement consists of two perforated concavo-convex diaphragms with threads of opposite pitch cut through bosses in the center of each. These are connected by a rod threaded from the middle toward each end, to correspond with the threads of the bosses, one end of said rod being squared to receive an adjustable hand wrench. This device, although easily removable, is held firmly in place in the cylinder by means of locks and studs attached to that diaphragm through which the threaded end of the rod passes and the inner side of the cylinder. Applying the wrench at each turn of the rod one diaphragm rapidly approaches the other, the right and left threads affording twice the speed and power obtained by the use of one thread.

The diaphragms do not turn; the rod only is turned. The drug is introduced into this cylinder resting upon the fixed diaphragm;

and thereupon the other diaphragm, being connected by means of the rod above described, operates as and for the purpose hereinafter mentioned, the drug being contained between the concave surfaces of the diaphragms. The chamber or vessel being closed, the menstruum or liquid can be admitted at either end, the convex surface of the diaphragm presented duly distributing the same over the whole surface of the drug, thereby equally and thoroughly saturating the whole mass. With this percolating chamber is combined a reservoir and a tube attached to the bottom of said reservoir and leading to the percolating vessel.

(Respondent here introduces a percolating device, marked "Respondent's Exhibit 10, A. H. D., Ex'r.")

Adjourned to November 6, 10 a. m.

62 NOVEMBER 6, 1883.

20. Referring to Exhibit 10, will you please state whether or not you caused the apparatus, consisting of a reservoir, tube, and chamber, to be constructed.

Ans. I did.

21. Has it been in your possession and use since you procured it to be constructed?

Ans. It has.

22. State whether you have publicly used it during that period in your business.

Ans. I have.

23. Exclusive of the diaphragms making a part of the exhibit, how long is it since you had the apparatus constructed and in use?

Ans. It was constructed in 1878, and has been in use until the last two years, since when I have used my improvement.

(Question and answer objected to.)

24. How does this apparatus, Exhibit 10, as used by you, differ from Boullay's percolator, as described in the U. S. Dispensatory, when used with an elevated column of liquid?

Ans. It is substantially the same.

25. Have you compared the apparatus, Exhibit 10, with Rosenwasser's device, Complainants' Exhibit F, and described in his letters patent, Complainants' Exhibit A? And, if yes, state any essential points of difference in construction and use.

Ans. I have. Exhibit F shows a pail and stop-cock attached to the side of said pail, with a tube running to a container and attached to its beak. Said container represents a cylinder having a top at right angles with its sides and a large open end at its bottom; the said container having one diaphragm secured in position within said container by means not set forth in the drawing or specifications of the complainants' letters patent.

63 Exhibit 10 represents a reservoir having a restricted screw-cap inlet and provided with a conical or tunnel-shaped bottom, which has a stop-cock and tubing attached and connected with

a cylindrical vessel having a funnel-shaped top and bottom telescoping upon each other.

The reservoirs are essentially different. In Exhibit 10 the liquid is discharged from the reservoir in such a manner as to entirely empty the vessel. In Exhibit A (Rosenwasser's letters patent) is an open pail with nothing to prevent evaporation of a volatile liquid. The liquid is discharged from its side, thereby preventing said vessel from being emptied entirely of its contents. In Exhibit 10 the cylindrical percolating vessel is provided internally with two diaphragms, between which the drug or solid is firmly held in position. The upper diaphragm is secured within said cylinder by means of locks and studs at a convenient distance from the top or cap piece of said cylinder, thereby forming a chamber which is very essential in the use of hydrostatic pressure from the reservoir above and also preventing the solid material used from swelling and clogging the beak when in operation. The top and bottom of the cylindrical vessels has a constricted inlet and outlet to prevent evaporation. In Complainants' Exhibit A the cylindrical vessel is provided with only one diaphragm at its bottom and nothing to prevent at its upper end the solid when saturated with the menstruum from clogging the restricted inlet to said vessel; also it has an enlarged open end of the same diameter as the cylindrical vessel and no provision made to prevent evaporation, which would render it useless for certain purposes. The one diaphragm at the bottom contained in the cylindrical vessel shows no method of holding it in position against the material or preventing the solid from falling from the percolating vessel. On strict comparison of the principle involved, aside from the internal arrangements for holding the solid, the principle of percolation involved is the same and the manner of using is the same.

64 26. Will you please examine letters patent to Woolston and Corfield, the same to Albert Merrill, the same to Edward Loisel—Respondent's Exhibits Nos. 7, 8, and 6, respectively—and point out wherein the form of the devices and principles used are similar to the form and device shown in Rosenwasser's letters patent, Complainants' Exhibit A?

Ans. In Exhibit 7 the principle involved of supplying a percolating vessel with a menstruum by means of a tube or pipe from a reservoir as compared with Rosenwasser's letters patent in the same. Exhibit 8, as compared with said letters patent, shows the same principle of supplying the percolating vessel by means of tubes or pipes from a reservoir. The same is true of Exhibit 6 as compared with said letters patent. In Exhibit 6, however, the menstruum is conducted into the chamber through the bottom, while in Rosenwasser's device it is the same, except that the percolator is inverted.

27. Have you examined the cuts and studied the description of a German percolating device called Realsche Presse, contained in Geiger's Pharmacy, introduced into this case? And, if yes, state the points of similarity or dissimilarity in form and principle involved between the Realsche Presse and Rosenwasser's device, Complain-

ants' Exhibits A and F and Berry device, Respondent's Exhibit 10 and Berry's device in his letters patent, Complainants' Exhibit E.

Ans. I have. The principle is the same; first, as to the use of a reservoir and tube or pipe connecting with a percolating vessel; second, as to the form of the cylindrical vessel and the inversion of the same for the purposes of filling and discharging the solid material, they are precisely the same.

Rosenwasser's percolator is not provided with a bottom as shown in the letters patent. The Realsche Presse and Exhibit 10 are provided with closed ends at the bottom. The internal construction of the Realsche Presse is as follows: It is provided with two or three diaphragms, one of which is first placed within the cylinder
65 on which the solid is placed; another diaphragm is placed against the drug, and the remaining unoccupied space of the chamber is filled with rings of different width corresponding with the inside diameter of the cylinder, so that the last ring so placed will rest upon the cover or bottom, which is afterwards securely fastened to the cylinder. The cylinder is now inverted and the tube applied and the menstruum conducted into the percolating chamber opposite the filling and discharging end. In Exhibit 10 one diaphragm is locked within the cylinder by means of hooks on the convex side of one of the diaphragms and studs corresponding to the hooks on the walls of the cylinder. A screw rod, provided with threads of opposite pitch, is inserted into the diaphragm previously locked in place, and the solid material is packed against the diaphragm. The second diaphragm is now placed upon the end of the rod and a wrench applied to the end of said rod. By turning the rod to the right the diaphragm is drawn firmly against the drug. The telescoping cover is now placed in position and the percolating vessel is now inverted and the tube applied opposite the filling and discharging end. This description I have inadvertently made to refer to Complainants' Exhibit E instead of Exhibit 10.

In Exhibit 10 one diaphragm is placed within the cylinder against studs attached to the inner walls of the cylinder, so as to form a chamber between the cap piece or top of the percolator and said diaphragm. The drug is now placed upon the diaphragm. The second diaphragm is now placed upon the drug and secured in position by means of two studs fastened on the inner side of the cylinder opposite each other, having braces on either side from the diaphragm resting upon the bosses. The telescoping cover is now placed in position and the percolating vessel is inverted and the tube attached to the percolator opposite the charging and discharging ends. A second method which I have used consists in placing one diaphragm within the cylinder and locking it in position by means of hooks secured on the convex side of said diaphragm and studs fast-
66 ened to the inner wall of the percolating chamber corresponding with the hooks on the diaphragm. A rod provided with a right thread passes through the diaphragm and is secured on the upper side of the diaphragm by means of a nut, so that said rod will turn in the center of the diaphragm. The drug, previously moistened, is now placed upon the diaphragm and the second dia-

phragm is placed upon the end of the rod. Said diaphragm is provided with a threaded boss corresponding with the thread of the rod. The wrench is applied and turned to the left, when the diaphragm approaches the drug. A telescoping cover is placed upon the percolator, and the percolating vessel is now inverted and the tube applied to conduct the liquid into the percolator opposite the charging and discharging ends. The first description of Exhibit 10 refers to the manner in which I have used it, the two studs placed in the wall opposite each other having been removed, as clearly shown by the marks of solder remaining on the wall.

(Counsel for complainants objects to that part of the above answer relating the Realsche Presse, because not pleaded in a way to admit this witness to testify to it, and because witness has no knowledge of the publication prior to complainants' invention, and because the allegation must be proved by the publication.)

(Adjourned to 3 p. m.)

3 P. M.

28. State whether you have examined the cuts and description of a percolating device contained in Geiger's Pharmacy, hereinbefore referred to, called the Realsche Presse; and, if yes, state the substantial points of difference between that device and Rosenwasser's and between that device and Berry's.

Ans. The principle involved is substantially the same,
67 excepting the arrangement of the diaphragms within the cylinder; also in the cut of Rosenwasser's patent the bottom is omitted and no provision is made to secure the diaphragm in place.

(Interrogatory and answer objected to as above.)

29. State whether or not they are substantially alike in form, as well as in principle involved.

Ans. They are.

(Same objection.)

30. What are the apparent differences, if any, in exterior form?

Ans. They are essentially the same, excepting that the Rosenwasser device is not provided with a cap piece for the bottom.

(Same objection as above, and because it is not competent to ask a witness concerning the contents of a printed publication, when the publication is not introduced, in order that the correctness of his representations may be tested.)

31. Please state whether or not the menstruum used by druggists in making extracts is of a volatile nature.

Ans. They are all of them of a volatile nature.

32. In the manufacture of extracts is the use of a percolating vessel with a large discharge orifice, such as is found in Rosenwasser's device, practical?

Ans. It is not. In making etherial preparations a greater part

of the ether would be lost before reaching the receiving bottle, and the resulting product would be of so concentrated a nature as to be in many cases absolutely dangerous to use. The same objection is true when using alcohol; also there is inconvenience in using a large open vessel to collect the percolate as it falls in its passage through the drug.

33. How long a time previous to the granting of your letters patent did you use a double-threaded rod in connection with your diaphragm?

Ans. About two years.

34. About how long the single-threaded rod?

Ans. For over two years.

68 35. And before that how did you maintain the diaphragm in place against the drug?

Ans. By means of braces from studs placed opposite each other in the walls of the cylinder, against the under side of the diaphragm.

Cross-examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

X 36. When did you first see Rosenwasser' patent?

Ans. Not till after my patent was granted.

X 37. Who was your attorney?

Ans. Ellis Spear, of Washington, D. C.

X 38. Were you referred to the Rosenwasser patent in your application?

(Objected to because if such reference is a part of the record in writing it is the best evidence.)

Ans. I was not.

X 39. When did you have the vessels composing Exhibit 10 made?

Ans. In 1878. I do not remember the month.

X 40. Who attached the ears to which the bail is connected on the reservoir?

Ans. That I could not answer.

X 41. Was it done in Saco?

Ans. It was not.

X 42. Where?

Ans. In Biddeford.

X 43. Do you not remember the firm or the name of the person or persons, or the place of business, or the street or the number, by whom and where it was done?

Ans. I do not.

X 44. Who attached the screw cap to the reservoir?

Ans. That I could not remember.

69 X 45. Was that done in Biddeford?

Ans. It was.

X 46. Where was the bail procured, and of whom?

Ans. I couldn't say. I don't remember.

X 47. Who soldered in the faucet?

Ans. I don't remember.

X 48. Was that done in Biddeford?

Ans. It was.

X 49. Did you have the percolating vessel made to order?

Ans. I did.

X 50. Who made that?

Ans. Jeremiah Goldborough.

X 51. Is he alive now?

Ans. He is.

X 52. Does he live in Biddeford?

Ans. He does.

X 53. Did he make the bottom piece of the percolating vessel also?

Ans. He did.

X 54. Did he insert the vent in the top of the percolating vessel?

Ans. I could not say.

X 55. Was the vent in the percolating vessel at or about the time it was made?

Ans. It was not.

X 56. How long after was it inserted?

Ans. I couldn't answer that definitely, but I will say three or four years.

X 57. When and by whom was the perforated disk with a handle on it made?

Ans. That was made in 1878.

X 58. Did Goldborough attach the nozzle on the top of the percolating vessel and the faucet or either?

Ans. He attached the nozzle or beak, but not the stop-cock.

X 59. Who attached the stop-cock?

70 Ans. I think a man by the name of Stewart.

X 60. Where is he now?

Ans. In Biddeford.

X 61. Where did you obtain the tubing?

Ans. I could not say.

X 62. How long has that been in use on this implement?

Ans. I could not say for a certainty, but I think it is one of the first I ever used for this purpose.

X 63. Was the iron perforated diaphragm ever used in this percolator?

Ans. It was not.

X 64. Were the two sheet-metal diaphragms—concavo-convex in form—one having hooks on the upper side, ever used in this percolator?

Ans. They were.

X 65. How early?

Ans. About four years ago—between '79 and '80.

X 66. Was the perforated disk now in the percolating vessel ever used therein?

Ans. Yes, sir.

X 67. How early?

Ans. In 1878.

X 68. How is it secured in place?

Ans. It is not fastened.

X 69. How is it held?

Ans. On the concave side by the drug and on the convex side by the studs on the wall of the percolator.

X 70. Where did you use this percolating vessel for the first time for the purpose of percolation?

Ans. At Biddeford, at my store, 147 Main street.

X 71. In what room or portion of the store?

Ans. In my laboratory.

X 72. When was this first time—what year and time of the year?

71 Ans. In 1878; the time of the year I am not prepared to state.

X 73. In what part of the building is this room?

Ans. It is in the store proper.

X 74. Who was present beside yourself or cognizant of the fact?

Ans. I could not say.

X 75. What was the drug or medicine which you first put into it?

Ans. I do not remember.

X 76. Do you state that no one was present?

Ans. I do not.

X 77. Did you have any clerk at that time?

Ans. I did.

X 78. What was his name?

Ans. I cannot say certain; I will tell you to-morrow.

X 79. Was the perforated diaphragm now in the percolator then in it, or one like it?

Ans. One like it. I think the identical one now in it.

X 80. What menstruum did you use at that time?

Ans. I do not remember.

X 81. Can you state positively that it was in 1878 that you used this percolator?

Ans. I can.

X 82. Was the faucet on it at that time?

Ans. A faucet was on it at that time.

X 83. State exactly what you did with this percolator at the time referred to.

Ans. That I could not state.

X 84. Will you testify that you put any drug in it at all at that time?

Ans. I will.

X 85. Not being able to remember the drug nor the menstruum employed, or what you did in manipulating the per-

72 colator, do you testify confidently still that you put any drug into this percolator at all?

Ans. I do.

X 86. Were you experimenting at this time upon the percolation of drugs?

Ans. I was.

X 87. When did you make your next experiment?

Ans. I continued them at every opportunity.

X 88. Was your first experiment successful?

Ans. It was not a perfect success.

X 89. What was the matter?

Ans. Not properly securing the diaphragms and improper packing of the drug.

X 90. Was your second experiment successful?

Ans. It was not.

X 91. What was the matter then?

Ans. The same as before.

X 92. How long was it after your first experiment before you reached a successful one?

Ans. I can't remember to state definitely.

X 93. State as near as you can.

Ans. About a year afterwards.

X 94. How many experiments did you make during that year?

Ans. I could not say.

X 95. State as nearly as you can.

Ans. It would be all guess-work, so I couldn't state.

X 96. Did you make a dozen?

Ans. Yes.

X 97. You testify, do you not, that this percolating vessel was the one used by you during this year?

Ans. I do.

X 98. Can't you describe in any particular how you used this vessel in the introduction of the drug, its saturation, or the getting of it out?

73 Ans. I can.

99. Please do so.

Ans. The diaphragm was first placed in the cylinder against the studs, and the drug, previously moistened, packed within. The second diaphragm was passed into the cylinder edgewise until it could be turned into its proper position against the drug, so as to avoid the studs at the bottom of the cylinder.

X 100. You call the end of this percolating vessel opposite to the end where the vent is the bottom end, do you not?

Ans. I do.

X 101. And that was the end through which you filled and discharged the vessel, was it not?

Ans. The solid; yes.

X 102. Why did you not give an account of this vessel in your affidavit filed under the preliminary motion in this case?

Ans. I don't know but it is referred to.

X 103. Will you now look at a sketch of a device, marked Exhibit C as attached to your affidavit, and state if that is not sworn to in said affidavit as the one used by you for the five years preceding the date of said affidavit?

(Objected to, because the contents of the affidavit must be shown by the affidavit itself.)

Ans. It is not. It is the one I used to experiment with, in ex-

perimenting to prevent the expansion of the material, for seven or eight years.

X 104. I will read an extract from that affidavit:

"In the course of my business, more than four years since, at Biddeford, I used a percolating vessel constructed in the form of an ordinary funnel, the body elongated in a cylindrical form. Placing the drug in this vessel, the form and interior arrangement of which is shown in Exhibit C, annexed and made a part of this affidavit, I secured the drug D in position by placing upon the exposed surface of the drug a flat perforating plate, G, pressing the same downward and holding it in place by means of a brace, B, backed by a cross-bar, A, fitted into the vessel, as shown in the drawing."

Was that true?

74 Ans. I used that more than seven years ago.

(Complainants introduce here the said affidavit, Exhibit C, to be marked "Complainants' Exhibit J, A. H. D., Ex'r;" also the said affidavit, to be marked "Complainants' Exhibit K, A. H. D., Ex'r.")

Adjourned to November 7, 3 p. m.

NOVEMBER 7—3 p. m.

X 105. I notice that you state in this affidavit, Exhibit K, that the complainant abandoned the invention made by him, and in May, 1882, adopted another form of percolator. How did you learn that fact?

Ans. By advertisements.

X 106. Were those advertisements, such as Exhibits 1, 3, 5, &c., introduced by you in this case?

Ans. Exhibits 5, 4, 3, and 2 show a difference from the letters patent.

X 107. And these were the advertisements from which you derived your information that his patent percolator was abandoned, as stated in your affidavit, were they not?

Ans. They were.

X 108. How could you know in May, 1882, that he had abandoned his patented percolator when you state in your X 36 that you never saw the Rosenwasser patent till after yours was granted, which was in October, 1882?

Ans. I received notice some time previous to my letters patent that the patent was allowed.

X 109. Is that all the explanation you can give?

Ans. My attention was called to the Rosenwasser percolator, and I sent to Washington for a copy of the Rosenwasser patent.

75 X 110. I notice in Respondent's Exhibit 1 a note in ink, "Advertised in May, 1882." When was that put on?

Ans. I could not say.

X 111. I notice in Respondent's Exhibit 5 a note in pencil, "This change since mine was patented." When was that put on?

Ans. I could not say.

X 112. I notice upon Exhibit 4 the words in ink, "Advertised December, 1882." When and by whom was that put on?

Ans. It was put on by myself; the date I could not state.

X 113. Since the evidence has begun—within the last few days?

Ans. It was not.

X 114. Were these notes put on when these were used in the hearing last spring?

Ans. They were put on previous to the hearing.

X 115. It now appears from these exhibits and from your affidavit that you were aware of the complainants' invention from May, 1882, and also in August, 1882, when you state that your patent was allowed. Since you are able to compare the invention patented and the one advertised by the complainant in May, 1882, do you still adhere to your statement that you had never heard of the Rosenwasser patent until after yours was granted?

(Counsel for respondent objects to the statement of counsel preliminary to his interrogation, on the ground that he erroneously states the contents of the exhibit and the affidavits as showing that the witness had actual knowledge of the facts referred to in his affidavit in the month of May, 1882, when the affidavit was made in the month of March, 1883, and asserts the witness' knowledge at that time, but not his knowledge in May, 1882, of facts existing at that time or in August following, and further objects that counsel erroneously states that witness has said that his patent was allowed in August, 1882.)

76 Ans. Did I say Rosenwasser's letters patent in my answer?

(Answer 36 read to witness.)

X 116. (Question repeated.)

(Counsel for respondent objects that Int. 36 inquires when did you first see Rosenwasser's patent; not when did you first hear of said patent, and that the question erroneously assumes that the witness has testified that he has heard, instead of saw.)

Ans. I never saw copies of the Rosenwasser letters patent until after mine was allowed.

X 117. The cut on Respondent's Exhibit 1 is intelligible to you, is it not?

Ans. It is not, perfectly.

X 118. Why did not you present model, Exhibit 10, at the hearing on preliminary injunction in the spring?

Ans. I did not consider it necessary at that time.

X 119. You had this model in possession at that time, did you not?

Ans. I did.

X 120. Now, you state, do you not, that under a motion to enjoin you from manufacturing your percolator, with Exhibit 10 in your possession, you did not think it was necessary to present Exhibit 10 as the percolator which you had used since 1878, which is almost an exact representation of the one patented by you?

Ans. I do.

X 121. While making that statement you are compelled to admit, are you not, that you introduced Complainants' Exhibit J in

evidence at that time, accompanying it by the statement that "In the course of my business more than four years since (to wit, March, 1883), at Biddeford, I used a percolating vessel constructed in the form of an ordinary funnel, the bottom elongated in a cylindrical form. Placing the drug in the vessel, the form and interior arrangement of which is shown in Exhibit C, annexed and made a part of the affidavit, I secured the drug D in position by
77 placing upon the exposed surface of the drug a flat perforated plate C, pressing the same downward and holding it in place by means of a brace, B, backed by a cross-bar, A, fitted into the vessel as shown in the drawing."

(Objected to on the ground that the drawing is stated to have been annexed to a statement, which statement, if in writing, should be presented; and, further, that the portion of said interrogatory in quotation marks does not contain the whole statement, but simply an extract, incomplete.)

(Affidavit, Exhibit K, handed to witness, and also Exhibit J.)

Ans. I used a device constructed similar to the drawing, Exhibit J, more than seven years previous to 1883.

X 122. You further stated, did you not, in the same affidavit, Exhibit K, that without the perforated plate marked E, upon which the drug was placed, the swelling of the drug when moistened would speedily clog the orifice beneath it?

(Objected to as before.)

Ans. It is so in the affidavit.

X 123. Is that the fact?

Ans. It is.

X 124. Then this Exhibit J was a percolator in which E occupied a place near the lower end during the process of percolation, did it not?

Ans. It was.

X 125. And in the absence of the plate E the drug D was liable to crowd down into and choke the orifice shown in the exhibit, was it not, as stated in your affidavit?

Ans. It was.

X 126. And the part described on the orifice, which is the small neck, was the lower end, as shown in the exhibit, was it not?

Ans. It was.

X 127. Was this Exhibit J intended to represent a vessel substantially like Exhibit 9?

Ans. It was.

X 128. How early did you use the two diaphragms on a
78 threaded rod, which are a part of Exhibit 10, and which diaphragms I will mark each with an X?

Ans. On this particular rod, or one just like it, as early as 1880.

(Witness adds: "As early as 1879.")

X 129. Exhibit J discharged the extract through the orifice, did it not?

Ans. It did.

X 130. This was charged with the drug, and the drug poured out of it, when exhausted, at the upper end, was it not?

Ans. It was.

X 131. Of Exhibit 10 you testify, do you not, that the percolator was charged with and discharged of the drug through the wide open end, which is the bottom, during the process of percolation?

Ans. I do.

X 132. The difference between Exhibit 10 and Exhibit J, as described by you in your affidavit, is very clear and easily understood, is it not?

Ans. It is.

X 133. Taking Exhibit 10, with its reservoir, stop-cocks, tube, and a perforated lower diaphragm, it is exactly what is described in Rosenwasser's patent, or very nearly the same, is it not?

Ans. In form it is substantially the same, excepting the telescoping cover for the bottom and means described for holding the lower diaphragm in place within the cylinder.

X 134. You consider your patented percolator, do you not, as different from and superior to Exhibit J?

Ans. I do.

X 135. Will you now explain your motive, while having in your possession at the time of the preliminary hearing the Exhibit 10, which you say is substantially the same as Rosenwasser's invention, for holding that back at that hearing and presenting in your
79 evidence then and swearing that you used it during the same years that you now say you used Exhibit 10, a device so different as Exhibit J?

(Objected to, first, that the interrogatory asserts, contrary to the fact, that the witness says that Exhibit 10 is substantially the same as Rosenwasser's invention, omitting the material difference stated by the witness in that Exhibit 10 is provided with a telescoping bottom and the device for supporting the diaphragms is substantially different; also that the question erroneously states that witness used it during the same years that he now says he used Exhibit 10, when, in fact, the witness stated in his affidavit that he used the device as shown in Exhibit J more than four years since, and now has stated that he used it more than seven years since.)

Ans. Exhibit 10 was retained for later proceedings in the case, and Exhibit J was used for more than seven years previous to that hearing.

(Adjourned to November 8, 1883, 10 a. m.)

NOVEMBER 8, 1883.

X 136. When did you see Exhibit 3 or one like it first?

Ans. I don't remember.

X 137. State as near as you can.

Ans. Some time previous to March, 1883.

X 138. Have you found the names of any of your clerks that were cognizant of the use by you of Exhibit 10?

Ans. The names of clerks that were with me when I was using Exhibit 10?

X 139. Name them all.

Ans. Charles A. Siegmond, William E. Emery, William Hill, and George Stover.

X 140. Where are they now?

80 Ans. Siegmond is in Boston, corner of Newton and Washington streets; Emery I don't know about; Hill is dead, and Stover I do not know about.

X 141. Are these all the clerks that knew the facts referred to?

Ans. They are all the clerks I had.

X 142. Name any other persons who were aware of the use by you of Exhibit 10 prior to May, 1879.

Ans. Dr. G. R. Ricker, dentist, Biddeford; Dr. C. T. Emery, physician, Biddeford; Dr. Fred. Bacon, physician, Biddeford, and, I think, Dr. H. E. Hill, of Saco.

X 143. Are these all?

Ans. All I think of at present.

X 144. Did you use any diaphragms in Exhibit 9?

Ans. I did.

X 145. Where are they?

Ans. I could not say.

X 146. Was not Exhibit J intended to represent Exhibit 9 and the method of its use?

Ans. It was.

X 147. In making the 19th answer in your direct you read from your affidavit, Exhibit K, beginning at the mark made in lead pencil, did you not?

(Answer 19 shown to witness.)

Ans. I did.

X 148. Did you ever testify in a patent case before as an expert?

Ans. I never did.

X 149. Were you ever called upon before in any case to compare letters patent with each other? And state the subjects-matter of different specifications thereof.

Ans. I never was.

X 150. Have you ever given any attention to machinery and mechanical implements—made a study of them?

81 Ans. I have always been very much interested in mechanical devices.

X 151. That was not the question. Have you ever made a study of machinery and mechanical devices?

Ans. Not extensively.

X 152. The affidavit, Exhibit K, is not in your handwriting, is it?

Ans. It is not.

(That portion of the deposition expert in character is objected to; witness not qualified.)

(The introduction of Exhibit 10 and all evidence pertaining thereto is objected to, no notice being given in the answer.)

X 153. You found, did you not, in the use of Exhibit 9 that the drug would crowd down into the orifice of the vessel when you did not use an interposing diaphragm?

Ans. I did.

X 154. Why did you put a diaphragm on the top of the drug, as well as underneath it, in this exhibit?

Ans. To hold the drug in place and to keep it from expanding.

X 155. You don't consider, do you, that Exhibit 9 is the same in principle and mode of operation as Rosenwasser's percolator or yours?

Ans. I do.

X 156. Did you use Exhibit 9 in a public manner since 1876 or in 1876?

Ans. I don't remember.

X 157. Did you use it in 1877 in that way?

Ans. I don't remember.

X 158. In 1878 in that way?

Ans. I don't remember.

X 159. In 1879 in that way?

Ans. I did not.

X 160. In 1880?

Ans. I did not.

82 X 161. Did you use Exhibit 10 in a public manner in 1878?

Ans. I did; but not all its parts as shown in the exhibit.

X 162. Did you use two perforated diaphragms in Exhibit 10 in 1878?

Ans. I did.

X 163. Telescoping cover in 1878?

Ans. I did.

X 164. Everything but the screw rod?

Ans. I did not use the screw rod nor all of the diaphragms in 1878.

X 165. Now, state when you first used Exhibit 10 in a public manner with the two perforated diaphragms.

Ans. Which two?

X 166. Any two.

Ans. In 1878.

X 167. When did you first use the screw rod with two diaphragms?

Ans. Which rod?

X 168. Any screw rod, like those in Exhibit 10.

Ans. In 1879.

X 169. What time of the year?

Ans. I don't remember.

X 170. When you use your patented percolator you have to remove the telescoping cover to put in the drug and to take it out, don't you?

Ans. I do.

X 171. What is the office or function of the telescoping cover

besides acting to close the end and diminish the evaporation of volatile liquids in your percolator?

Ans. It made it a reversible percolating vessel.

X 172. Anything else?

Ans. It makes the cylinder firmer when subjected to the action of the drug during the process of percolation.

X 173. Anything else you can think of?

83 Ans. To conveniently collect the percolate and conduct it into the receiving bottle.

X 174. A percolating vessel, having a gradually narrowing discharge end, either rigidly fixed or removable, for the purpose of guiding the extract into a receptacle, is an old and well-known device, is it not?

Ans. It is.

X 175. Such a thing has been in use by druggists and in laboratories for a great many years, has it not?

Ans. Yes.

X 176. Then there is nothing substantially new in your telescoping cover, is there?

Ans. No.

X 177. Do you read German?

Ans. No, sir.

X 178. Upon this subject, *de bene esse*, from what source did you derive your knowledge of the device called the Realsche Presse?

Ans. From cuts in Geiger's Pharmacy; from Hugo Thum, of Grand Rapids, Michigan; from the editor of the Deutsche Amerikanishe Apotheker Zeitung, Johns street, New York, No. 104; also from A. F. W. Nietsch, 158 Harrison Ave., Brooklyn, N. Y.

X 179. Have you ever yourself read any published descriptions accompanying the drawings in any publication of this device?

Ans. I never have read, but I have had them explained.

X 180. Then all the knowledge which you yourself have derived directly from publications about this device has been obtained from an examination of cuts, has it not?

Ans. I have read descriptions of this apparatus that were not accompanied with cuts.

X 181. Where; in what?

Ans. In public print and private communications—letters.

X 182. What public prints? State fully.

84 Ans. Druggists' Circular. That's all I think of at present.

X 183. What was the date of publication?

Ans. I don't remember.

X 184. How long ago did you read it?

Ans. In the early part of this year.

X 185. Was it a publication of about that date?

Ans. It was not.

X 186. How old was it? State fully.

Ans. I could not now state.

X 187. How could you testify that it was not about the date when you read it, when at the same time you cannot testify anything about the date?

Ans. I know that it was an old volume.

X 188. Prior to 1880?

Ans. I do not remember.

X 189. Can you produce it?

Ans. I think I can.

X 189½. Please do so, and annex it to this deposition, will you?

Ans. If it is in existence I will.

X 190. Now, leaving out of account what has been told to you, written to you, and this circular, state from your examination of the cut or picture which you have seen of this Realsche Presse, from memory, exactly and fully how you understand that device works.

Ans. One diaphragm is placed within the cylinder. Without bearing in mind the description I could not tell exactly how it works.

X 191. Then, of your own knowledge, as derived from the cuts or pictures alone, you do not know the operation of this device, do you?

Ans. Not fully.

X 192. As derived from your own knowledge, excluding what has been told you by mouth or letter, can you describe the structure of this device?

85 Ans. It is a cylindrical vessel with a movable bottom, having perforated plates, to be secured within the cylinder by suitable means, and a pipe attached to an elevated reservoir, through which the chamber is supplied with the liquid, opposite the large filling and discharging end.

X 193. How do you know that the diaphragms are to be secured within the cylinder by suitable means merely by an inspection of the cut, without any description having been made by you?

Ans. To keep them there.

X 194. How do you know that there are such means provided merely by an inspection of the cut, without having read any description of them?

Ans. By looking at the cut.

X 195. How do you know that there is a large filling and discharge orifice, since you say you cannot give us a description of the operation of the device aside from what has been told you?

Ans. It is so represented in the cut.

(Complainants move to *show* out all testimony of this witness relative to this device and the descriptions thereof, because witness is not qualified.)

X 196 *de bene esse.* In your view is Fig. 2 of Respondent's Exhibit 6 the same in principle and mode of operation as the device set out in the Rosenwasser patent?

Ans. The principle is the same in both. One passes up through the bottom and the other down.

X 197 D. B. E. Is that all the difference?

Ans. One has means employed for securing the material in place and the other has not.

X 198 D. B. E. Have you now stated all the difference?

Ans. All the principal difference.

X 199 D. B. E. In all other substantial respects they are alike, are they, in your judgment?

Ans. The principle is the same.

86 X 200 D. B. E. Is Respondent's Exhibit 7 the same in principle and mode of operation as the Rosenwasser patent, in your judgment?

Ans. The principle is the same, excepting that the Rosenwasser patent shows no means of holding the diaphragms in place, and no provision is made for collecting the percolates.

X 201 D. B. E. Is Respondent's Exhibit 8, in your judgment, an anticipation of the Rosenwasser patent?

Ans. The principle is the same, with the same exceptions as was made in the last answer.

X 202 D. B. E. Is the cut annexed to the affidavit of Hampton E. Hill the same, in your judgment, as the Rosenwasser patent?

Ans. The same in principle, with the same exceptions as before.

(Said cut is introduced, to be referred to only.)

(All evidence in the direct and cross relative to Exhibits 10 and 9 objected to because not pleaded in the answer, cross-interrogatories being propounded *de bene esse*. Evidence relative to the German publication containing an alleged description and cut of the Real'sche Presse and the introduction of the alleged publications objected to as not authenticated by competent evidence, the cross being put in *de bene esse*.)

(Respondent replies that the objection should be overruled, not only on the merits, but because it was not seasonably taken.)

(Adjourned to 3 p. m.)

3 P. M.

Redirect by Mr. LUNT:

R. D. 203. Looking at Respondent's Exhibits 1, 2, and 4, state how you obtained them.

Ans. They are clippings from the "Druggists' Circular,"

87 and were obtained previous to the hearing on motion for preliminary injunction.

R. D. 204. State from the Druggists' Circular printed in what months and year they were clipped.

Ans. Exhibit 2 was clipped from the November number, 1882; Exhibit 1 from the May number, 1882, and Exhibit 4 from the December number, 1882.

R. D. 205. State whether or not you have sold the articles described in Respondent's Exhibit 11; and, if so, for how long a time?

Ans. I have; for more than ten years.

(Said exhibit, marked Respondent's Exhibit 11, is here introduced.)

(Counsel for complainants objects to the admission of said Ex-

hibit 11, because the same is not properly authenticated and is irrelevant.)

JOHN BERRY.

Attest: A. H. DAVIS, *Examiner.*

88 *Taken Pursuant to the 67th Rule of the Supreme Court of the United States, in Equity, as Amended, Before John S. Derby, Examiner.*

NEW YORK, 160 BROADWAY, *Nov.* 12, 1883.

Present: William Henry Clifford, Esq., counsel for complainants; Wilbur F. Lunt, Esq., counsel for respondent.

Deposition of A. F. W. Nietsch.

Direct examination by Mr. LUNT:

Int. 1. Please give your name, residence, age, and business.

Ans. Adolph F. W. Nietsch; residence, 156 Harrison avenue, Brooklyn, E. D.; age, 59; am a pharmacist or druggist.

2. Are you a graduate of any pharmaceutical institution?

Ans. I am; New York College of Pharmacy.

3. How long have you been engaged in the business?

Ans. Since my fourteenth year.

4. Have you made yourself acquainted with the different methods of obtaining extracts by percolation and the various implements and devices used by druggists for that purpose?

Ans. Yes, sir.

5. (Respondent's Exhibits 12 and 13 shown to witness.) Are these books yours?

Ans. Yes, sir.

89 6. When did you obtain them and how long have you had them?

Ans. Since 1845 or 1846. I bought this one (Exhibit 12) in North William St., New York, and this (Exhibit 13) I had from a doctor named Bode.

(Respondent introduces "Geiger's Pharmacie," marked "Respondent's Exhibit 13;" also "Respondent's Exhibit 12, Geiger's Pharmacie," edited by Justus Liebig.)

7. Have you read in Respondent's Exhibit 13, from the mark on page 157 to the mark on page 159, the article there relating to "Real'sche Presse;" and also in "Respondent's Exhibit 12," from mark at top of page 157 to a mark at the top of page 160?

Ans. Yes, sir.

8. In what language, if you know, are these books printed?

Ans. German.

9. Do you speak and write German with ease and correctness?

Ans. Certainly. I think so, at least.

10. Do you speak and write the English language also?

Ans. Yes, sir.

X 198 D. B. E. Have you now stated all the difference?

Ans. All the principal difference.

X 199 D. B. E. In all other substantial respects they are alike, are they, in your judgment?

Ans. The principle is the same.

86 X 200 D. B. E. Is Respondent's Exhibit 7 the same in principle and mode of operation as the Rosenwasser patent, in your judgment?

Ans. The principle is the same, excepting that the Rosenwasser patent shows no means of holding the diaphragms in place, and no provision is made for collecting the percolates.

X 201 D. B. E. Is Respondent's Exhibit 8, in your judgment, an anticipation of the Rosenwasser patent?

Ans. The principle is the same, with the same exceptions as was made in the last answer.

X 202 D. B. E. Is the cut annexed to the affidavit of Hampton E. Hill the same, in your judgment, as the Rosenwasser patent?

Ans. The same in principle, with the same exceptions as before.

(Said cut is introduced, to be referred to only.)

(All evidence in the direct and cross relative to Exhibits 10 and 9 objected to because not pleaded in the answer, cross-interrogatories being propounded *de bene esse*. Evidence relative to the German publication containing an alleged description and cut of the Real'sche Presse and the introduction of the alleged publications objected to as not authenticated by competent evidence, the cross being put in *de bene esse*.)

(Respondent replies that the objection should be overruled, not only on the merits, but because it was not seasonably taken.)

(Adjourned to 3 p. m.)

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R. D. 203. Looking at Respondent's Exhibits 1, 2, and 4, state how you obtained them.

Ans. They are clippings from the "Druggists' Circular,"

87 and were obtained previous to the hearing on motion for preliminary injunction.

R. D. 204. State from the Druggists' Circular printed in what months and year they were clipped.

Ans. Exhibit 2 was clipped from the November number, 1882; Exhibit 1 from the May number, 1882, and Exhibit 4 from the December number, 1882.

R. D. 205. State whether or not you have sold the articles described in Respondent's Exhibit 11; and, if so, for how long a time?

Ans. I have; for more than ten years.

(Said exhibit, marked Respondent's Exhibit 11, is here introduced.)

(Counsel for complainants objects to the admission of said Ex-

hibit 11, because the same is not properly authenticated and is irrelevant.)

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Deposition of A. F. W. Nietsch.

Direct examination by Mr. LUNT:

Int. 1. Please give your name, residence, age, and business.

Ans. Adolph F. W. Nietsch; residence, 156 Harrison avenue, Brooklyn, E. D.; age, 59; am a pharmacist or druggist.

2. Are you a graduate of any pharmaceutical institution?

Ans. I am; New York College of Pharmacy.

3. How long have you been engaged in the business?

Ans. Since my fourteenth year.

4. Have you made yourself acquainted with the different methods of obtaining extracts by percolation and the various implements and devices used by druggists for that purpose?

Ans. Yes, sir.

5. (Respondent's Exhibits 12 and 13 shown to witness.) Are these books yours?

Ans. Yes, sir.

89 6. When did you obtain them and how long have you had them?

Ans. Since 1845 or 1846. I bought this one (Exhibit 12) in North William St., New York, and this (Exhibit 13) I had from a doctor named Bode.

(Respondent introduces "Geiger's Pharmacie," marked "Respondent's Exhibit 13;" also "Respondent's Exhibit 12, Geiger's Pharmacie," edited by Justus Liebig.)

7. Have you read in Respondent's Exhibit 13, from the mark on page 157 to the mark on page 159, the article there relating to "Real'sche Presse;" and also in "Respondent's Exhibit 12," from mark at top of page 157 to a mark at the top of page 160?

Ans. Yes, sir.

8. In what language, if you know, are these books printed?

Ans. German.

9. Do you speak and write German with ease and correctness?

Ans. Certainly. I think so, at least.

10. Do you speak and write the English language also?

Ans. Yes, sir.

11. State whether or not the plate marked 1, figures 10 and 11, in Exhibit 12, are referred to in the portion of the book relating to "Real'sche Presse," before referred to.

Ans. Yes, sir.

12. Have you examined "Respondent's Exhibit 14*a*?" If so, state whether or not it is a correct translation into the English language of that portion of Exhibit 13 and Exhibit 12 relating to the "Real'sche Presse," therein contained, and state whether you compared it with the original.

Ans. Yes; to the best of my knowledge, it is; I compared it. I read that one (Exhibit 13) and then that one (Exhibit 14*a*) and Exhibit 12.

13. State whether or not you made an examination of the original printing in Exhibits 13 and 12, so that you are able to
90 state that Exhibit 14*a* is or not a correct translation of the same into the English language.

Ans. Yes, sir.

14. And is it?

Ans. Yes.

(Exhibit 14*a* introduced in evidence by respondent.)

(Complainants' counsel objects to the admission of the translation, because the qualifications of the witness have not been sufficiently shown in the preliminary examination; also because no qualification of the actual translator has been shown, and because the translation itself does not appear affirmatively to have been made with exactitude sufficient to amount to a specification such as the patent law requires.)

15. State whether or not you have seen or used what is known and referred to in said Exhibit 12 as "Beindorf's Real'sche Presse," and in figures 10 and 11, plate 1, of said exhibit.

Ans. I have seen and had in my possession what is in plate 1, figure 11, known as Beindorf's modification of Real'sche Presse.

(Counsel for complainants objects to the question and answer.)

16. Please state how long since you had such device in your possession.

(Objection continued.)

Ans. Couldn't say exactly; about from 20 to 25 years.

17. Please describe the form and construction and method of using the same.

(Objection continued.)

Ans. It was a cylinder from block tin, which was open on one end and on the other was funnel-shaped. There was a screw at the funnel-shaped end. In the middle on both sides there was a protuberance so it could rest on something and turn around. In this cylinder there were two perforated plates, and likewise there belonged to it several tin rings that fitted into the cylinder, of different widths

or heights, and at the bottom there was a knob at each side
91 and a funnel fitted on. There was a rim and a cut-out attached to the funnel so that you could tighten it on. You could push it up, turn it round, and tighten it on. When I worked it I put it on a stool. There were pivots on the sides so I could rest it on the stool. I put first one of the perforated plates in, so that it rested on the funnel-shaped end; then I put in the substance I wanted to extract, press it more or less tightly, according to the nature of the substance, and put in a round piece of cloth or felt cut like the cylinder, then the other perforated plate, and filled out the empty space with these rings, screwed the funnel on, shoved it up and turned it around, then reversed it. I then filled up the funnel-shaped end of the cylinder with the menstruum, then attached a tin pipe about one-half of an inch in diameter, and screwed it on and added the menstruum through the pipe till the operation was completed. I had a reservoir with a cock to it at the end of the pipe.

18. The reservoir you last referred to was elevated above the percolating cylinder and connected therewith by a pipe, was it not?

(Objection continued, and as to form.)

Ans. Yes; it was connected. I had a pail, and in the bottom of it I had a faucet, and this faucet I connected with the pipe of the percolator, and let it run in that way.

19. State the principal parts of the percolating device used by you, and whether or not these parts were combined together when the same were in use.

(Objection continued.)

Ans. There was a cylinder containing the substance to be extracted, a pipe of some length filled with the menstruum to act as pressure, and a reservoir containing the menstruum. They must be combined or they couldn't be used for that purpose.

20. Where in the cylinder was the orifice for charging and discharging the substance to be percolated? Please describe the form of the cylinder.

92 (Objection continued.)

Ans. The orifice for charging the cylinder was at that part where the funnel-shaped end could be taken off. The cylinder is a cylinder.

21. Please describe the form of the end of the cylinder opposite the end where it was charged and discharged with the substance to be percolated.

(Objection continued.)

Ans. It was funnel-shaped, because the perforated plate was placed where the funnel begun.

22. State, in charging the cylinder with the substance to be per-

colated, in what position you placed it as compared with the position of the cylinder when percolation was in process.

(Objection continued.)

Ans. I reversed it, so that the funnel-shaped end which was attached to the cylinder was downwards. Then the open end came on top after taking off the other funnel-shaped end.

23. State whether or not there was any means known to or used by you for varying the height and pressure of the column of the liquid menstruum.

(Objection continued.)

Ans. No; because the difference in height only made quicker work.

24. State whether or not tubes were made and used of any flexible material.

(Objection continued.)

Ans. I haven't used any of flexible material, but Geiger says they may be used.

25. State whether or not when you say the cylinder is reversed for the purpose of charging it, that you used the word "reversed" as meaning the same as the word "inverted."

(Objection continued.)

Ans. Does inverted mean tipped up this way? Certainly I so meant it.

93 26. Was the copy of "Geiger's Pharmacie" which you purchased on sale at store in N. Williams street?

Ans. Yes, sir.

27. Have you seen in this country other copies of the works number 12 and 13, respondent's exhibit?

Ans. Yes, sir.

28. Please state how and where you procured the Beindorf percolating device which you have described as in your possession and use formerly.

Ans. I don't know the firm's name; it was so long since; it was a store down-town here in New York city. A man kept druggists' sundries and utensils. I was down there buying goods, and he said he would let me have it cheap. He showed it to me and offered it to me. I think I gave five dollars for it. I know I got it cheap, or else I wouldn't have bought it.

29. Where and how long did you use it?

Ans. I used it in my place of business, corner of Varick and Brown streets, in New York city, State of New York, United States of America. I used it, I suppose, about three or four years. I cannot state exactly.

30. Where upon your premises did you use it?

Ans. I had a little outside building used as a laboratory attached to the building—kind of an extension of the house.

31. State whether other persons had access and entry to your laboratory while the device was so used by you.

Ans. Most likely, because I didn't make any secret of it. Friends came sometimes to visit me. I might have explained it to them.

32. What became of the device, and how long since you last saw it?

Ans. I left it when I sold my store—left it on the premises. About twenty years ago I sold the store.

94 Cross-examination by W. H. CLIFFORD, counsel for complainants:

33. What substances did you percolate in the machine which you testify you bought?

Ans. I extracted different roots and herbs—for example, rhubarb.

34. Can you name any other?

Ans. Yes; wormwood, gentian root, Peruvian bark, century minor, dandelion.

35. In what condition were the drugs when placed in the percolator?

Ans. They were ground up more or less fine, according to the nature of the drug.

36. Did you have any clerks or employees at the time you had this device in use?

Ans. I had an apprentice boy.

37. What was his name, and where is he now?

Ans. Couldn't tell you his name. He kept a drug store, or keeps one now, up in Third avenue. I can find it out.

38. Had you any other percolating device in use at the time you had this one?

Ans. No; I didn't have any other.

39. What year did you sell out that place?

Ans. I have to calculate back. I think 'twas about '61 or '62.

40. Was the percolator included in the sale?

Ans. Certainly; everything that was in the store belonging to the business.

41. To whom did you sell?

Ans. To a gentleman named H. Paepke.

42. Does he keep there now?

Ans. No.

43. Is he alive?

Ans. Yes.

95 44. Where does he live and where is he in business, if at all?

Ans. He is in 6th avenue, near 14th street, or was the last I knew.

45. Have you seen him recently?

Ans. No; not recently; guess it was about 9 or 10 years since.

46. Did he use it?

Ans. I can't tell.

47. Was there a schedule made of the goods sold at that time?

Ans. What do you understand by schedule—a specification?

48. Yes.

Ans. No; there was no schedule.

49. Was this a second-hand percolator when you bought it; had it been in use before?

Ans. Not to any appearance. I had a tin pipe made to it. That wasn't with it. Of course, they wouldn't import that.

50. Did the cylinder come apart at or about the center?

Ans. No, sir.

51. Did the upper end come off?

Ans. The end which is the upper when in use did not come off.

52. You fitted the tin tube to the hole in this upper end, did you not?

Ans. Yes; there was a screw, and screwed it on, you know.

53. What did you use as the vessel to contain the percolate?

Ans. I put a bottle under so as to let the percolate run into it.

54. What sort of a vessel contained the liquid menstruum?

Ans. It depends upon the liquid. If I had water I used a pail; if I used dilute alcohol I used a bottle.

55. How long was the tube which you made?

Ans. About six feet, I think; it couldn't be any more, because of the height of the ceiling.

56. And the tube had a flaring upper end, did it not?

96 Ans. It was funnel-shaped.

57. Describe exactly how you manipulated this percolator from beginning to end in making your extracts with it.

Ans. After grinding the substance to a proper fineness I moistened it with the menstruum and put the percolator upon the stool and inverted it; put the perforated plate in and put the substance on top of it, pressing it more or less tightly, according to the nature of the substance; put the disk of felt on and another perforated plate and filled the empty space, if any, with those rings, and put the other funnel on, tightened it by shoving those two knobs through the opening in the ring and turned it around, then reversed the whole percolator so that the end where the pipe screws on came up, filled the empty space of the funnel with the menstruum, and attached the pipe by screwing it on and kept it filled with the liquid menstruum till the percolation is completed.

58. Have you ever used a similar percolator since you sold the one of which you testified?

Ans. No.

59. What kind of percolator have you used since?

Ans. The common sugar-loaf form, which is now used, and Dr. Squibb's improved.

60. Was there a faucet in the vessel that contained the menstruum?

Ans. Yes; if I used a pail with water.

61. How did you manage when you used the bottle?

Ans. Used a syphon then.

62. What was the difference between the elevations of the bottle and the percolator when you used the syphon?

Ans. The percolator is always below; all you have to do is to get the syphon in proper position to the funnel-shaped tube so the liquid can run in.

63. How much higher was the bottle than the percolator when you used the syphon?

97 Ans. It was so much higher that the syphon could act. I couldn't tell by the inch or anything like that.

64. How long was the long arm of your syphon?

Ans. It was as much longer as it must be. I didn't measure.

65. Can't you tell us what the length of your syphon actually was?

Ans. I suppose about two feet.

66. Did you mostly use a dilute alcohol in making your extracts when you used this percolator?

Ans. Not mostly; no; more water, because I didn't make fluid extracts at that time. I made solid extracts.

67. What were the dimensions and capacity of the percolator?

Ans. About one gallon. I should say about eighteen or twenty inches; with the funnel it was more; diameter about four or five inches.

68. Why did you discontinue the use of this kind of percolator after the sale to Paepke?

Ans. Because the use was sort of troublesome, and I thought I would use the common percolator; although it worked slower, it worked just as well with proper care.

69. In what respect was this percolator troublesome in use? Please enumerate.

Ans. The first thing was to get the proper pressure on those rings; they wouldn't always fit exactly to the open space; then another thing was putting the whole thing together. It was more troublesome than a common percolator; you had to put this all together. If by pressing too tightly you had to take the whole thing apart, because nothing would go through at all; in a common percolator you can regulate that easily.

70. Is it not your experience that the percolators you have since used are equally as effective and less troublesome in use than this old one?

Ans. Yes; for small business.

71. You experienced considerable trouble in the regulation of the pressure in the old percolator, did you not?

98 Ans. No more than in any; but if by accident I should press it too hard it was more trouble to regulate it.

72. The trouble in regulating the pressure resulted from the use of the rings as supports for the diaphragm, did it not?

Ans. No; it did not from that exactly. When you do not percolate every day you don't know exactly what pressure each substance wants.

73. What was the nature of your business on Varick and Broome streets—was it an ordinary drug store?

Ans. Yes; in the German way, as much as you can in this country.

74. What was the extent of your business; was it large, small, or medium?

Ans. It was for that time about medium.

75. Please describe what you mean by the German way of conducting this business.

Ans. I mean preparing or keeping on hand the German preparations—as it was customary with the Germans.

76. How long do you say you used this percolator?

Ans. About four or five years.

77. How often, as near as you can state, in a week or a month were you accustomed to use the machine?

Ans. Sometimes I used it two or three times in a week and sometimes I wouldn't use it for three or four weeks, if I had nothing to make.

78. Were you accustomed to do much percolating when you were in this store?

Ans. Not before I had this percolator. I used to extract by maceration, digestion, by pressing it out by a press.

79. Can you testify that you used it on an average twenty times a year?

Ans. No; I couldn't testify.

80. You say you purchased this cheap. Why were you able to get it at a cheap rate?

Ans. He had no sale for it, he said. He imported it with 99 other things and had no sale for it, and said he would let me have it cheap.

81. Have you ever, previous to this time, attempted the translation of German books into English, or extracts therefrom, to be used for legal purposes?

Ans. No, sir.

82. Are there not a considerable number of English words, such as have occurred in the progress of this examination, of whose meaning you are more or less uncertain?

Ans. There was a few, and I asked for an explanation to see if I was right.

83. Do you profess to have an exact and extensive knowledge of the English—its idioms, grammer, and phrases?

Ans. Yes, as far as common goes, not as to law technicalities.

84. You are familiar with English of common discourse, are you not?

Ans. Yes, sir.

85. And you do not intend to say that your knowledge of the language extends beyond colloquial English, do you?

Ans. No, sir.

86. Have you read the specifications of the patent to Mr. Rosenwasser?

Ans. I believe Mr. Berry showed me the specifications.

87. You understand the structure of the percolator described therein, do you not?

Ans. Yes—from that and the drawing in the newspaper which I saw.

88. State when Mr. Berry exhibited to you the description in the patent and when you saw the drawing in the newspaper.

Ans. I saw the drawing, I think, about a year and a half or two years ago, when it came out in the newspaper—the advertisement of it. The other I saw when Mr. Berry was here, November 11th, the day before the deposition was taken, when he called to notify me to come here.

100 89. Do you notice any differences between Rosenwasser's percolator and the one you have described as in use by you on the corner of Varick and Broome streets?

Ans. Rosenwasser didn't have that funnel-shaped end in the bottom, and had a flexible tube, but no material differences.

90. Are you acquainted with Berry's percolator?

Ans. No more than from the picture I have seen and the explanation Mr. Berry gave of the difference he said there was.

91. This translation was made by H. C. Hiepe, was it not?

Ans. Yes.

92. Have you compared it with the original in German?

Ans. Yes, sir.

93. Was there a vent or cock of any kind in the upper end of this percolator which you bought?

Ans. Yes; there was—in what I call the upper funnel—a cock so you could let off the water there was in the pipe when you stopped percolation.

94. State where it was that you bought this percolator.

Ans. It was somewhere in Liberty street, of a young man who had his store upstairs; he sold druggists' sundries.

95. State when your attention was first called to this percolator as compared with the one described in the Rosenwasser patent and advertisements; when and by whom?

Ans. I saw the advertisement in the Dutch Americanische Apoteke-Zeitung, and I, remembering my old percolator, wrote him, the editor, that this was only the old thing freshed up; about a year and a half ago; can't tell exactly.

96. Have you a copy of the letter, and was it written in German?

Ans. I have no copy, but I suppose he mentioned it in his paper. It was in German.

A. F. W. NIETSCH.

101 *Deposition of Hampton E. Hill.*

PORTLAND, *November* 23, 1883.

Direct examination by WILBUR F. LUNT, Esq., counsel for respondent:

Int. 1. What is your name, age, residence, and occupation?

Ans. Hampton E. Hill; Saco; 33 years old; physician and surgeon.

2. Are you a member of any medical or pharmaceutical societies and a graduate of any medical institutions? If yea, state what.

Ans. I am a member of the Maine Medical Association; graduate of the medical department of the Michigan University.

3. How long have you been in practice?

Ans. Since the spring of 1871.

4. Have you ever engaged in the business of a pharmacist; if so, when, where, and how long?

Ans. I have; in Biddeford and Portland, Maine; about four years in all; from 1865 to 1869.

(Respondent introduces "Respondent's Exhibit 14, A. H. D., Ex'r.")

5. Will you examine the drawing, Respondent's Exhibit 14, with the explanation appended, and state who made the drawing and written statement?

Ans. I made both.

6. State what it is made to represent.

Ans. It is made to represent a pressure percolator or hydraulic percolator.

7. Please describe the form and method of construction of such a percolator.

Ans. It consists of a reservoir elevated above an inverted
102 percolator, the two being connected by a rubber tube, the flow being controlled by a spring clothes-pin on the rubber tube, the inverted percolator being used over a diaphragm resting in a glass funnel, by which the percolate was conveyed to a bottle or flask.

8. State whether or not, by the inverted percolator, you mean the vessel in which the substance to be extracted is placed.

Ans. I do.

9. State in what position you hold that percolating vessel when charging it with the substance to be extracted.

Ans. Open end up.

10. State whether the body of this percolating vessel in which the substance to be extracted is placed is made in more pieces than one.

Ans. It is not.

11. How is the diaphragm or perforated plate supported in the mouth of this percolating vessel?

(Objected to.)

Ans. The diaphragm rests in the funnel and the percolator on the diaphragm.

12. State whether or not you combined and constructed such a device for percolation at any time. If yes, when and where?

Ans. Yes; in the summer of 1869, at Portland.

13. Did you use it?

Ans. I did.

14. Where?

Ans. In my store, on the corner of Cumberland and Myrtle streets, in Portland, Maine.

15. During how long a period was it in use?

Ans. I used it at different times during the soda season, in warm weather; I should think about three months.

16. Where was the device operated in your store?

Ans. Over one end of the back counter.

103 17. State whether it was exposed to the view of your customers coming into your store.

Ans. It was.

18. State whether or not, to your knowledge, the use of an elevated reservoir and a tube applied to a percolating vessel by an air-tight connection, for the purpose of obtaining pressure, is, to your knowledge, old and known to pharmacists more than eight years ago.

Ans. It was so known more than eight years ago.

19. Please state whether or not, while you were engaged in the business of a pharmacist and since then, you have known of any devices being publicly sold consisting of a reservoir to be elevated, connected with a flexible tube, for the purpose of obtaining pressure. Please look at Respondent's Exhibit 11.

Ans. I have.

20. State what those devices were.

Ans. Fountain syringes and different forms of nasal douches.

21. Do you know John Berry, of Biddeford, Me., druggist?

Ans. I do.

22. Where were you living in 1878?

Ans. In Biddeford, Me.

23. State whether or not you frequented the drug store of Mr. Berry during that year.

Ans. I did.

24. Please look at Respondent's Exhibit 10 and state whether or not you saw the whole or any part of that device or one precisely like it in Mr. Berry's store during the year 1878.

(Objected to; no allegation.)

Ans. I did; I saw it a great many times.

25. State where it was when you saw it—in what position.

(Same objection.)

Ans. Hanging up near the head of the cellar stairs, in the store.

26. How many times in 1878 did you see that device or any part of it in Mr. Berry's store?

104 (Same objection.)

Ans. I used to see it commonly a good many times when I went in. It used to hang there regularly.

Cross-examination by Wm. H. Clifford, Esq., counsel for complainants:

X 27. Did you ever take apart the percolator which you say you saw in the store of the respondent, at Biddeford?

Ans. I did not.

X 28. At any of the times that you can now remember of having seen this or a similar device in the store of the respondent, at Biddeford, did you ever take it apart and examine its internal structure and arrangements?

Ans. I did not.

X 29. Then, at the times on which you can now remember of having seen this device or a similar one, you were ignorant, were you not, of its internal structure and arrangement?

Ans. I was.

X 30. Can you state positively that the two cylindrical vessels now before you, in the form of Exhibit 10, were the identical vessels, by your own knowledge, which you from time to time saw, or at all of the times together saw, in the store of the respondent?

Ans. I am not sure that they are the same vessels, but they have the same appearance.

X 31. Then, Doctor, is not your actual knowledge strictly limited to the external appearance of two cylindrical vessels?

Ans. To the two cylindrical vessels and the rubber pipe.

X 32. Are you positive, so that you can testify without hesitation, that the two cylindrical vessels that you saw were of the same diameter and length as the ones before you?

Ans. I am not positive, but they appear to be the same ones.

105 X 33. Please state upon what support or how otherwise held was the half I now show you which has a handle on the funnel-shaped end.

Ans. It was hanging up by the bail on the square end. I think it was hung on a hook or nail upon the side of a cornice, near to the ceiling, nine or ten feet from the floor.

X 34. Please state in what manner the other vessel was supported and on what.

Ans. I have no recollection.

X 35. Did you ever make any careful examination of or give any particular attention to the vessels you saw, any more than you would to any other articles suspended or placed in any equally conspicuous place in an apothecary store?

Ans. I gave more attention to it and asked some questions about it; but he was not inclined to be communicative about it and I concluded not to make any more inquiries.

X 36. Are you able to state positively, as to the question of dimensions, that either of these two vessels was not of the size of Exhibit 9, for instance?

Ans. I am.

X 37. Can you testify positively that that part of the device which you saw corresponding to Exhibit 10, now provided with a removable funnel-shaped end, had such removable funnel-shaped end on it at the times you saw it in the shop of the defendant?

Ans. I do not remember.

X 38. Can you positively state that that part of that device had any funnel-shaped lower end to it at the times you saw it?

Ans. I am not sure. I have an impression that it had, but can't state positively, as it was a good while ago.

X 39. Can you state positively, of your own knowledge and not by information, that you ever saw the device in operation, however made?

106 Ans. I cannot state positively at this late day, for I have forgotten.

X 40. Can you state, Doctor, that the upper of these two vessels had the screw cap and stop-cock?

Ans. Not positively; but it has the same appearance now as when I saw it. As to the screw cap, I am not sure. I am sure the stop-cock was on it.

X 41. Are you positive concerning the other cylinder as to the stop-cock and nipple?

Ans. I am not.

X 42. Will you state when it was that Mr. Berry first recalled your attention to the fact of your having observed these two vessels, placed as you have described, in his store, with a view to receiving your evidence thereupon?

(Objected to as assuming that Mr. Berry did call witness' attention to the matter, when there is no evidence of such a fact appearing in the examination.)

Ans. It was, I think, either Tuesday or Wednesday of this week.

X 43. Any allusion to these devices not appearing in your affidavit and in Respondent's Exhibit 14, I conclude that Mr. Berry had not spoken to you concerning Exhibit 10 at the time this affidavit was sworn to, March 30, 1883. Am I correct?

Ans. Not in detail; only that he had such an arrangement, so far as I recollect now.

X 44. Can you state positively that prior to March 30, 1883, Mr. Berry had called your attention to the fact that you had seen these two vessels of which you have testified in his store in 1878?

Ans. I have no recollection of his having called my attention to it.

X 45. Then when the affidavit of March 30, 1883, was made by you it contained, in your judgment, did it not, all the knowl-

107 edge of this class of percolators in use as early as 1877 or '8 you then possessed, excluding any allusion to an elevated reservoir in general, nasal douches, etc., and confining your answer to percolators strictly of the class of Rosenwasser's or Berry's?

(Affidavit shown to witness and by him read.)

Ans. I don't think that it did include all that I knew of, for I had seen a description something like Rosenwasser's device in a work nearly a hundred years old, I think.

X 46. I mean more particularly that at the time of giving this affidavit of March 30, 1883, you did not have in your mind the device which you saw in the respondent's shop in 1878, did you?

Ans. Not one just like, but one of similar principle.

X 47. I don't think you understand me. I mean did you have

any existing memory of the 1878 device at the time you made oath to the affidavit of March 30, 1883?

Ans. I had a recollection of seeing it, as I have testified—as far as its outside appearance went. I did not know what was inside of it and I don't know.

X 48. I presume, then, that, having this memory of that device and knowing nothing of the internal structure, you did not consider it to be of any pertinency to this case and so omitted mentioning it. Am I correct?

(Objected to—irrelevant—it not appearing that the witness was ever called upon to give his affidavit to any other points than those referred to in said affidavit.)

Ans. In that testimony of March 30 I simply testified to facts therein stated as being all that was asked of me at the time.

X 49. Was Mr. Berry present when you were consulted with a view to your affidavit, or when you were questioned, or when you wrote out or prepared the same and the sketch annexed thereto?

Ans. He was *pressed* when I was questioned, but not when I made the affidavit and the sketch annexed to it.

X 50. Did he ask you at that time to keep back the fact
108 that you had seen these two cylinders and the hose in his store in 1878?

Ans. He did not.

X 51. Was any allusion at that time made by him, that you can now remember, to the two cylinders and the hose, as seen by you, and to the fact that they were seen by you in his store in 1878?

Ans. I don't have any distinct recollection as to whether he did at that particular time, but he did at some time near then. I think it was afterwards, but am not sure.

X 52. Doctor, can you positively testify that Mr. Berry spoke to you about your having seen that device in 1878, prior to the first of November instant?

Ans. I can't say positively that he did, but I think he did.

X 53. What I mean is, are you willing, as a witness, to make oath that he did actually speak to you about your having seen these two tin things in his store in 1878, before the first of this month?

Ans. I think he did, but not with reference to any testimony here.

X 54. You do not quite answer my question. Do you make oath that Mr. Berry did so speak to you prior to the first of this month?

Ans. No; I do not.

X 55. Now, will you please state when he first spoke to you of this matter with a view to your giving a deposition in this case?

Ans. Either Tuesday or Wednesday evening of this week.

X 56. When did you first learn from Mr. Berry, if ever, that this was, according to his statement, a percolator—I mean Exhibit 10?

(Question reread to witness at request of counsel for respondent.)

109 Ans. This week, definitely, but indefinitely some time ago; just when I don't remember now.

X 57. Was the word "indefinitely" employed by you as descriptive of the account which Berry gave you of what was inside of the cylinder or of the time when he thus spoke to you of it?

(Previous question and answer reread to witness at the request of Mr. Lunt.)

Ans. I meant by that that it was a percolator; not about the inside of it at all.

X 58. Now, please state the earliest date you can testify to when Berry told you in this indefinite way that that 1878 machine was a percolator.

Ans. Some time this last spring.

X 59. Can you testify that Berry told you that the 1878 device was a percolator before you gave your affidavit of March 30th?

Ans. Not positively.

X 60. Is it or not the inclination of your mind that it was afterwards?

Ans. I can't say.

X 61. Did you ever see in Berry's store Exhibit 9, or something like it?

Ans. I don't remember it.

X 62. For what purpose did you use the device, Exhibit 13, in your store in Portland?

Ans. For syrups, for soda, or for any use—simple syrups.

X 63. You employed it, did you not, for the dissolving of crystals of sugar?

Ans. I did.

X 64. Of course your contents of your vessel D was dissolved and passed away in liquid form when the operation was complete; was it not so?

Ans. Yes; if the water was not let on too fast.

X 65. The spring clothes-pin C was employed, was it not,
110 to regulate and control the drip of the water upon the sugar so moderately that dissolution of the sugar might take place?

Ans. It was by means of a small wooden wedge.

X 66. In making syrup of the kind produced in this device you used the clothes-pin which you have described, did you not, to make the proportion of water and saccharine substance correct and so as to get the syrup of the proper density and sweetness?

Ans. No; I used it to completely shut the water off till I was ready to let it on, and afterwards with a small wooden wedge to control the amount of water to be let on during a given time.

X 66½. Did you always fill D chock full of sugar?

Ans. I did.

(Counsel for complainants asks leave of the court to refer to the affidavit of witness, dated March 30, the whole being open for inspection and comment by both sides, and introduces the same, not to be printed.)

(Counsel for respondent objects, unless said affidavit is introduced in evidence, and also objects to the use of said affidavit in contradiction to answers of witness upon any collateral matters concerning which counsel for complainants has interrogated the witness.)

X 67. In the percolation of drugs the medicinal substance has a tendency to swell and occupy more space when saturated with water and some other liquids than when it was in a dry state, before saturation, does it not?

Ans. Most of them do. I think some pure gums do not swell.

X 68. Is not the reason of this, as in the case of crystals of sugar, that dissolution and washing away of the gums commences almost simultaneously with the contact of the water or alcohol with the gums?

Ans. I think it is more because the gums do not contain
111 any woody fibre, as also in the case of sugar; also there is not the same amount of capillary attraction in the mass.

Redirect by Mr. LUNT:

R. D. 69. State whether or not, in 1878, when you saw the device, Exhibit 10, or one like it, in Berry's store, you then knew or recognized the use and purpose of the device.

(Objected to because involving no fact, but a process of reasoning by the witness.)

Ans. I did not know it from him; I surmised what it might be for. It was a Yankee guess.

R. D. 70. What did you then surmise that it might be?

Ans. A percolator of some kind.

R. D. 71. State whether or not the device used by you for percolation in 1869, Respondent's Exhibit 14, could be practically used for general percolation of drugs as well as for making syrups.

(Objected to; witness is called to testify to facts of previous use under the statute, not to theorize.)

Ans. It could be used, but not with any advantage over the ordinary way of percolation—not as I had it arranged.

HAMPTON E. HILL.

Attest: A. H. DAVIS, *Examiner.*

112 *Deposition of George R. Ricker.*

PORTLAND, *Nov.* 30, 1883.

Direct examination by WILBUR F. LUNT, Esq., counsel for respondent:

Int. 1. What is your name, age, residence, and occupation?

A. George R. Ricker; 27 years old; Biddeford, Me.; dentist.

2. State how long you have been engaged in the profession of dentist in Biddeford.

Ans. Five years since last May.

3. Did you come to Biddeford five years ago last spring?
Ans. I did.

(Respondent's Exhibit 10 shown to witness.)

4. State when, if before to-day, you first saw this device, Respondent's Exhibit 10.
Ans. I saw it in the spring of 1878, or one just like it.
5. Where did you first see it in the spring of 1878?
Ans. In John Berry's drug store, Biddeford, Me.
6. Was Mr. Berry using it?
Ans. He was.
7. State whether or not you were in his store frequently during the year 1878.
Ans. Unless sick or out of town I think I was in there every day.
8. How many times did you see this device?
Ans. Well, it was hanging where I couldn't help seeing it. I generally went in behind his counter, where he was operating.
9. Have you continued your frequent calls at Mr. Berry's store since that time?
Ans. I have.

113 10. Did you in 1878 observe the internal arrangement of the percolating vessel which is now shown you, the same having both ends funnel-shaped and being a part of Exhibit 10?
Ans. I did.
11. Did you early in 1878 observe the method adopted by Mr. Berry for securing in place the bottom diaphragm next to the open end of said vessel?
Ans. I know I have seen him using sticks to fasten it in in the spring of 1878.

Cross-examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

X 12. Do you state that these two vessels are the identical ones that you saw at Mr. Berry's store?
Ans. Those or some just like them.
X 13. Where were they placed?
Ans. They were hung—this part (touching the reservoir)—perhaps three or four feet from the entrance to the cellar door.
X 14. What were they suspended from?
Ans. From the ceiling.
X 15. From what in the ceiling were these vessels hung?
Ans. I do not know.
X 16. Which one is uppermost?
Ans. The one with the bail.
X 17. Do you remember how the lower one of these two was supported?
Ans. It was set through a bench.
X 18. Do you remember by what the two vessels were connected?
Ans. A rubber tube.

X 19. Can you testify from your own recollection of the spring of 1878, and not from information otherwise derived,
114 that the lower vessel has this perforated diaphragm placed as you now see it?

Ans. I cannot.

X 20. Can you testify of your own knowledge of 1878, and not from information otherwise derived, that the lower vessel had in it at the time it was being used a diaphragm like this one with a small handle on it?

Ans. I cannot.

X 21. Did you ever see the lower vessel when you can state, from your own knowledge, in the spring of 1878, and not from information otherwise derived, that it had within it either or both of the two diaphragms referred to?

Ans. I can; but I can't state the particular day.

X 22. Can you testify, of your own knowledge, that you saw that vessel with those two diaphragms in it in 1878?

Ans. I did, or one just like it.

X 23. Do you know, of your own knowledge, what was in the vessel at the time when you say you saw it in use?

Ans. I do not—a drug.

X 24. Did you ever see Berry filling the vessel with any substance?

Ans. I have.

X 25. Do you know what it was?

Ans. I do not.

X 26. Can you testify that the vessel that you saw had this nipple?

Ans. I cannot.

X 27. Can you testify that the other one had this screw cap?

Ans. I cannot, but I think not.

X 28. Can you testify that both of them or either of them had the stop-cock which you see on them now?

Ans. They both had them on them.

X 29. Was the lower end of the lower vessel set down into or through a hole in the bench or table?

115 Ans. The funnel-shaped end did.

X 30. Did you see any perforated diaphragms separated from the lower vessel lying about anywhere near it?

Ans. I can't remember.

X 31. Do you know what was contained in the upper vessel?

Ans. I can't say what was contained in it at the time, but generally diluted alcohol.

GEO. R. RICKER.

Attest: A. H. DAVIS, *Examiner.*

Deposition of Charles A. Siegemund.

PORTLAND, *November* 30, 1883.

Direct examination by WILBUR F. LUNT, Esq., counsel for respondent:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Charles A. Siegemund; 27 years old; Boston, Mass.; pharmacist.

2. Have you ever been in the employ of John Berry, druggist, of Biddeford, Me.; if so, when?

Ans. Yes; in 1878 and previous years; beginning in 1876 and leaving off in 1880.

3. State whether or not you have seen the device now shown you, Respondent's Exhibit 10, in Biddeford. If yes, where and when did you first see it?

Ans. I could not swear that it was the very identical thing, but one similar in every way, shape, or manner—that is, so far as the exterior is concerned. I saw it in Biddeford in the year 1878 at John Berry's drug store.

116 4. State whether or not you saw it in use by Mr. Berry in his store in 1878.

Ans. Yes.

5. How—continuously.

Ans. I have seen it used lots of times; seen him at work upon it, charging and discharging. I can't say how many.

6. Did Mr. Berry use this percolating device in making extracts from drugs?

Ans. Yes; extracts and tinctures.

7. Can you state whether or not he used perforated diaphragms in the interior for holding the drugs in place?

Ans. Yes; he did.

8. How did he, when you first observed, fasten the outer diaphragm against the drug?

Ans. By means of sticks supporting the diaphragm and holding it in place—pieces projecting out on the inner surface.

9. Do you mean that the sticks rested upon points or studs projecting from the lower end and inside of the percolating vessel?

Ans. Yes, sir.

10. State if you can point out the place where such projections existed or if you see any marks indicating where those studs were.

Ans. I can't point out the particular place. The sticks were in there, some four or five, I think. I can't recollect just where they were.

11. How long have you been engaged in the business of pharmacy?

Ans. About ten years altogether.

12. When did you first know of the process of percolation by using an elevated reservoir containing the menstruum connected by a tube with a percolating vessel, the upper end of which was air-

tight, and which vessel was charged with a drug at the opposite or lower end?

Ans. In 1878, sure.

117 Cross-examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

X 13. Were the sticks which you speak of made to rest upon projections on the inside of the vessel?

Ans. Yes, sir.

X 14. They extended across from one side to the other, did they not?

Ans. No; they did not.

X 15. How were they held up?

Ans. Pushed up against the lower diaphragm and held by pieces projected out from the bottom on the inner surface.

X 16. What were these pieces on the inner surface made of?

Ans. Of wood in some form.

X 17. How were they fastened to the vessel?

Ans. By pieces projecting out from the bottom of the inner surface of the vessel.

X 18. What were those projecting pieces made of?

Ans. I couldn't say. I think tin.

X 19. How many were there?

Ans. Say four or five. I think four or five.

X 20. Then the diaphragm rested on the sticks that rested on the projecting pieces, did it not?

Ans. The lower diaphragm was supported in place by the sticks and rested on those pieces that projected out from the inner surface of the vessel.

X 21. Did you ever see Berry put the diaphragm in?

Ans. Yes, sir.

X 22. How did he put it in?

Ans. He put in one diaphragm that projected on the inner surface; packed his drug in some form, or whatever he had to go into it; then placed the lower diaphragm against the drug; put these sticks in that were supported by these pieces that projected from the inner part of the surface of the vessel; then put on the lower cover.

118 X 23. How near to the projecting pieces did he fill the vessel with the drug—up close to them, so as to nearly fill the vessel with the drug?

Ans. According to the amount of drug; those sticks were cut accordingly.

X 24. Now describe how the diaphragm was put into the vessel.

Ans. Pieces projected on the inner surface at the further end—say two or three inches, or more. These pieces that projected out were placed right around, and the diaphragm was shoved up in—one of them—then the drug placed in and packed; the other diaphragm placed in and supported by these pieces of wood.

X 25. At which end was the first diaphragm inserted?

Ans. At the funnel-shaped end.

X 26. Was it pushed up into the vessel flatwise by hand?

Ans. Yes, sir.

X 27. Was the other diaphragm put in in the same manner?

Ans. Yes, sir; onto the drug.

X 28. Was the lower diaphragm placed in the mouth of the vessel and pushed in flatwise, the same as the other one?

Ans. Yes, sir; and supported by these sticks—that is, onto the drug.

X 29. Can you positively testify that you have accurately described the manner in which Mr. Berry inserted the diaphragms into the vessel?

Ans. The way I have described it is the way he put them in; yes, sir; I can testify to that positively.

X 30. You were in Mr. Berry's employ how many years?

Ans. About four years.

X 31. You saw this device from time to time when it was being used?

Ans. Yes, sir.

X 32. You saw Mr. Berry, I suppose, frequently when he
119 pushed the diaphragms into place as you have described, did you not?

Ans. Yes, sir; I saw him occasionally.

X 33. You saw him doing this often enough, did you not, to be clear as to how it was done?

Ans. Certainly.

X 34. How many of these projecting pieces were there to support the sticks that held the lower diaphragm?

Ans. Some four or five.

X 35. How many pieces were there to hold the upper one?

Ans. Some four or five. There may have been more.

X 36. How far did they project, as nearly as you can recollect?

Ans. Some two or three inches or more from the top.

X 37. How far did they project into the vessel or from the walls where they were attached?

Ans. A half inch, less or more.

X 38. Was or not the lower diaphragm always held in the same place in the vessel?

Ans. It couldn't have been; it was placed according to the amount of drug you want to percolate. The sticks were cut according to the length and rested upon the pieces that projected out.

X 39. Are you sure that the two vessels that you saw at Berry's were of the same size as the two now before you?

Ans. I couldn't say exactly, but similar in every way.

X 40. Could you positively testify that they were not of the size of Exhibit 9, now shown you?

Ans. Yes; I could.

X 41. Could what?

Ans. Say they were not exactly of the same size.

X 42. Can you testify which of the two vessels was placed uppermost? If so, point it out.

Ans. The reservoir was up.

120 X 43. Can you testify that the upper vessel had the screw cap?

Ans. It had something similar to prevent evaporation. It may have been a screw cap; I could not say.

X 44. Did the lower one have the nipple?

Ans. I can't recall just at present; it was funnel-shaped, anyway, at both ends, one end removable.

(Counsel for complainants takes a diaphragm and pushes it into the vessel flatwise and asks witness as follows:)

X 45. Is this the way you saw Berry put the diaphragm into place?

Ans. A similar way; he pushed them in.

X 46. I suppose you saw him doing this quite frequently, did you not?

Ans. Yes, sir; I could not help it.

X 47. Can you positively testify that there was a diaphragm in use near the upper end of the vessel, such as is seen in it now?

Ans. None permanent. There was one placed when the machine was in operation.

X 48. What did the lower vessel rest on?

Ans. Rested on a board that projected from the side of the wall—that is, when it was all set up and charged it rested on a board and the contents went into a Morson's magnesia bottle—a gallon bottle—graduated on the side.

X 49. Were these tin projections soldered, do you think, to the inside of the vessel?

Ans. Yes; they were soldered in on the inner part.

X 50. How high above the precolator was the reservoir elevated?

Ans. Five or six feet.

X 51. I suppose the position of the lower diaphragm was regulated by the length of the sticks that rested against the tin projections, was it not?

Ans. Yes, sir.

121 X 52. Do you testify that both of these vessels had the stop-cocks that you see on them now, or any stop-cocks at all?

Ans. I couldn't say there were the same identical stop-cocks, but there were two stop-cocks, one at the top and one at the bottom. I recollect them well; they were two old ones we had in the store.

X 53. You became very familiar, did you not, with this percolator and with Berry's method of using it while you were at work in this store?

Ans. Quite so, for the time I was there. He worked it himself and I saw him working it.

X 54. He always pushed his diaphrams in flatwise, as you have stated, did he not?

Ans. What time I was there. While I was with him I noticed it.

X 55. Did the lower diaphragm which you saw when you were there have a handle on it like the one now shown you?

Ans. I couldn't recollect. I know he put it in. I am sure of that.

X 56. Did you, for instance, see him put in the diaphragms as often as once a week while you were working for him?

Ans. Could say so exactly. I have seen him put them in time after time.

X 57. Always put them in flatwise, did he?

Ans. He put one in, then put the drug in, then put the other in, whenever I saw him, and the lower diaphragm was supported by sticks.

X 58. Did Berry have more than one of these percolators while you were with him?

Ans. I recollect one similar to this in operation; also a common glass percolator, which all drug stores have.

X 59. Did he have any other tin one but this one?

Ans. I couldn't say; I think there was another tin one kicking round.

122 Redirect by Mr. LUNT:

(Witness is shown the lower percolating vessel.)

R. D. 60. If there were projections inside this vessel from the walls near the lower end exceeding two in number how was it possible for Mr. Berry, holding the diaphram flatwise, to push it straight in against the drug?

Ans. I should have been more careful. He put it in this way (sloping it) and then pushed it against the drug.

CHARLES A. SIEGEMUND.

Attest: A. H. DAVIS, *Examiner*.

Deposition of Edward E. Swett.

PORTLAND, *Nov.* 30, 1883.

Direct examination by WILBUR F. LUNT, Esq., counsel for respondent:

Int. 1. What is your name, age, residence, and occupation?

Ans. Edward E. Swett; 53 years old; Kennebunkport, Me.; running a stone quarry.

2. Where were you in the early part of 1878?

A. In McKean Co., Pennsylvania.

3. In what business were you then engaged?

Ans. In the torpedo business—topedoing oil wells.

4. Did you have occasion to come to Maine during the year 1878; if so, what was the occasion of it?

Ans. I did; on account of my mother being thrown from her carriage and fatally injured.

5. Can you state about what time of the year that was?

123 Ans. It was the first of December.

6. State whether or not while you were home in Maine, in the month of December, 1878, you visited the drug store of John Berry, of Biddeford.

Ans. I did.

7. Did you see Mr. Berry and have any conversation with him?

A. I did.

8. Look at this contrivance, Respondent's Exhibit 10, and state whether or not, at the time of your visit to his store in said December, 1878, you saw this percolating device.

Ans. I did, or something like it, as near as I can tell.

9. Did you then examine the percolating device?

Ans. I did.

10. Did you have any conversation with Mr. John Berry in regard to it while you were so examining it?

Ans. I did.

11. Was the percolator in actual use in the process of percolating when you looked at it?

Ans. It was not.

12. State whether or not you examined the interior arrangement of the percolating vessel at that time.

Ans. I did.

13. Did you then notice how the lower diaphragm was kept in position by Mr. Berry?

(Objected to, witness not having testified to any diaphragm.)

A. I did—at least, how he explained to me it was kept in position; I did not see it work.

14. State what devices were contained within the percolating vessel when you saw it.

Ans. There were two perforated plates, and, as nearly as I can remember, they were held in place by little bosses soldered onto the inside of the vessel.

124 15. State whether or not any little sticks or props were used, so far as you saw or had explained to you.

Ans. Yes; he explained to me that, as fast as the drug settled, he squat down the perforated plate and shoved it down under those bosses. I suggested to him another way to do it.

16. Please examine Exhibit 10 carefully and state whether you have any doubt that this device is the identical one then exhibited to you by Mr. John Berry.

Ans. I think it is the same one, or one just about like it—just like it with the exception that something has been taken off there (pointing to the lower inside surface of the percolating vessel). The bosses have been taken off.

Cross-examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

X 17. Are you of any relation to Mr. Berry?

Ans. Mr. Berry's mother is a cousin to me.

X 18. Are you on intimate and friendly terms with Mr. Berry; are your families intimate?

Ans. No; they are not acquainted—his family and mine. I have always been on friendly terms with Mr. Berry.

X 19. Did he make this disclosure to you as a confidential matter at that time, as one would to a friend in whom he confided?

(Objected to as calling for an expression of opinion on part of witness.)

Ans. He says to me: "Here, Swett, you are working a patent. Come here and see what I am getting up." He explained it to me then all through; took it down and took it apart, and explained it all to me.

X 20. Your mother died in the early part of December, 1878, did she not?

Ans. The 4th day of December, 1878.

125 X 21. Where have you resided since you were in Pennsylvania, in 1878?

Ans. I resided in McKean county, Pennsylvania, and in Cataraugus county, New York.

X 22. Ever since?

Ans. Until the summer of 1880, and since at Biddeford and Kennebunkport, Me.

X 23. How many times in all have you seen this device or one like it in Berry's shop?

Ans. One just like it or something similar every time I have been in his shop. I saw it hanging there.

X 24. Can you swear positively that it was not in 1880 that Berry talked with you about this machine?

Ans. I can.

X 25. How can you fix the date of seeing the percolator as being the same or about the same as the date of the death of your mother?

Ans. Because after I buried my mother I stayed in Biddeford some four or five days, and that was the time that I saw it, while I was waiting.

X 26. When were you first requested by Mr. Berry to testify in this case, and where?

Ans. I can't tell exactly the day, but it was some time last week at Biddeford.

X 27. Did you at that time talk over the fact of your visiting his store in 1878?

Ans. We did.

X 27½. At the time of this conversation did you remember the date as clearly as you now do?

Ans. I did not. I rememberd that it was at the time my mother died, and that that was in 1878, but I had to refresh my memory as to the exact day of the month.

X 28. Were you, at the time of this conversation last week, then positively certain that you saw the percolator near the

126 time of your mother's death, and did you not have to refresh your memory on that point?

Ans. I was. I did not on that point. I was positive of it.

X 29. What I mean is that without this conversation with Mr. Berry could you then have testified as confidently as you now do that it was in 1878 that you saw the percolator?

Ans. I could.

X 30. Supposing you had not conversed with Mr. Berry at all, could you have testified to the year 1878 without something to convince you that that was the year?

Ans. I don't know exactly how to answer that. If there had not been anything said about it I should never have thought about it. He called my attention and asked me if I could remember the fact of his showing me his percolator. I told him that I recollected it well, from the fact that it was the time I came home to bury my mother. He wanted to know when that was, and I told him that it was in the fall of 1878. He asked me if I could testify to that, and I told him I could, and I have.

X 31. Did you at this time run over with Mr. Berry the conversation and description which you have given of the device?

Ans. We did not.

X 32. Suppose you had not conversed with Mr. Berry and refreshed your recollection, could you have positively testified that it was in 1878 that he explained to you about the diaphragms and shoving up with the sticks?

Ans. I could.

X 33. Have you not seen the different parts of this device in 1880 and years since?

Ans. I have not; not to examine them. I have seen tinmen at work on John Berry's patent, but that is all.

X 34. You have seen, have you not, at various times the diaphragms and the vessels and funnel-shaped end that is removable?

127 Ans. I have not seen them, except hanging up behind his counter, since I examined them.

X 35. You have said that Mr. Berry explained to you, when the drug settled, that he shoved up the diaphragm against it. What did you understand from him caused the drug to settle?

Ans. I should have to think a good while before I could tell what I thought at that time. I don't know as I gave it any thought what he wanted me to understand. I know I made a suggestion to him what I should do to make them settle.

X 36. At the time of this conversation in 1878 you did not understand, did you, what was to make the drug settle?

Ans. No. I didn't give it a second thought, as I know of, about the drug. All I was anxious about was to have him improve it according to my ideas.

X 37. Did you understand from Mr. Berry at that time that when the drug did settle the disk was shored down upon the drug?

Ans. No. I understood it was shored up from the bosses.

X 38. Are you quite positive about that, whether it was to be shored up or down?

Ans. Oh, I am positive it was to be shored up.

X 39. How was the upper diaphragm held in place when you saw it in 1878?

Ans. I couldn't say how. I think it was merely dropped in.

X 40. Are you positive that there was one?

Ans. I am positive that there were two perforated plates.

X 41. Did you understand the process of percolation when you had this conversation in 1878?

Ans. I did not; only as he explained to me then.

X 42. Did he state to you that during the process the drug settled and so required that the plate should be shored up?

128 Ans. He explained to me that as the strength came out into the alcohol he squat the followers together and shored them up with props between the perforated plate and the boss.

X 43. How many bosses were there on the inside of the vessel?

Ans. Two only, on the bottom of the vessel, that I saw.

X 44. You are sure of that, are you?

Ans. Yes; I think I am sure.

X 45. Did Berry describe to you how the thing was to work? And, if so, state what he said at that time.

Ans. Yes. I can't remember everything he said; he said a good deal.

X 46. State all that you can remember that Berry said describing the way the whole machine was to work.

Ans. He took the percolator (Respondent's Exhibit 10) or one like it, and he explained to me that he put the first perforated plate inside into the top of the vessel. He then put in his drug, and then he put the other perforated plate onto the drug and secured this plate under the bosses by props, if needed. He then put the bottom on. I asked him what held the bottom on. He said it would naturally stay on itself, it fitted so tight. Then I suggested to him that he put on some starts between the bottom and perforated plate, and that he put two little rods, one on each side, outside, secured at the top and at the bottom, set up with a thumb screw. Then that reservoir or one like it was hanging up in a little small room back of the counter, and he took and showed me how it worked.

X 47. Repeat, as near as you can, what he said in thus explaining how it worked.

Ans. He said he put the alcohol into the reservoir up there; that it came down and went through the drug and came out of that nozzle Jamaica ginger, for that was what he was making at that time.

EDWARD E. SWETT.

Attest: A. H. DAVIS, *Examiner.*

129 *Deposition of George L. Hill.*

PORTLAND, *Dec.* 31, 1883.

Direct examination by WILBUR F. LUNT, Esq, counsel for respondent:

Int. 1. What is your name, age, residence, and occupation?

Ans. George L. Hill; 28 years old; Phillips, Me.; tinsmith.

2. How long have you been engaged in the trade of a tinsmith; and are you a practical worker in that metal?

Ans. 9 years last August. I consider myself as a practical workman.

3. State whether you are now employed as a journeyman; and, if so, at what wages.

Ans. I am; at $12 a week.

4. State whether or not you made this device marked "Respondent's Exhibit 15, A. H. D., Ex'r."

Ans. I did.

(Respondent here introduces said device marked as above.)

(Complainants object to the introduction of said exhibit and the evidence connected therewith as irrelevant.)

5. What description or direction did you have, if any, for the construction of this device?

Ans. This writing that I have here and this drawing.

(Said writing and drawing are here introduced and marked "Respondent's Exhibit 16, A. H. D., Ex'r.")

6. Did you ever see or make a druggist's percolator before you did this work?

Ans. No, sir.

7. Did you have any other directions or instructions than what you have already stated?

Ans. No, sir.

130 8. Did you make this percolator entirely from the description and drawing, without the exercise of any invention on your own part?

Ans. Yes, sir.

Cross-examination by WM. HENRY CLIFFORD, Esq., counsel for complainants.

X 9. Did you ever witness a druggist's percolator in operation?

Ans. No, sir.

X 10. You made this device, Exhibit 15, following the sketch and written description as closely as you could, did you not?

Ans. I did.

12. At the time of making this percolator did you know anything of the way in which the Realsche press, described in that extract, Exhibit 16, was to be handled and operated when in use?

Ans. Only what I got from the writing.

X 13. Please state, in your own language, what you gathered from that description as to the manner in which that device was intended to be used.

Ans. The way I understood it from the writing was that this percolator was to be reversed like this (illustrating); that this cylinder should be filled with a substance to be extracted, and that this cylinder (the inner one) should be put into the outer one and pressed down firmly upon the substance to be extracted and fastened with these hooks so as to be held firmly in position; then the funnel-shaped end to be put on, and the whole contrivance to be reversed and placed in proper position; then the tube to be attached, and the tunnel or funnel in the top of the tube to be filled with

water. The pressure of the water acting on the substance would cause it to leach through and come out of the lower end of the percolator impregnated with the substance or drugs to be extracted.

131 X 14. You felt warranted by the description, did you not, to make this cylinder in two parts, one telescoping within the other?

Ans. I did.

X 15. The hooks and the holes in the inner cylinder were arrangements of your own contriving, were they not?

Ans. No; I took them from the paper—as near as I could understand from the description given.

X 16. Did you do the same as to the manner of arranging the lower perforated plate?

Ans. Yes, sir.

X 17. And also as to the manner of uniting the two halves of the cylinder?

Ans. Yes, sir.

X 18. Who requested you to make the model?

Ans. My employer, W. F. Fuller, of Phillips.

X 19. What did he say to you at that time?

Ans. He says, "Hill, did you ever do any work from a drawing?" I said, "Yes, sir." He took the description and drawing from his pocket and passed them to me, saying, "Read that and see if you can make something just like it." I asked, "What is it?" He said, "I cannot tell you, only the name of it; it is a percolator for druggists' use. You take it home and read it and let no one see it, for you may have to go to court about this. To-morrow make one like it." That's all.

X 20. Were these all the explanations, orders, or directions that you received about the making of this machine, aside from the paper and the sketch?

Ans. They were.

X 21. Do you know Mr. Berry, the respondent in this case?

Ans. I do not.

X 22. Point out the passage in the description that authorized you to say that this upper half should be held bottom side up while the drug was being put in.

Ans. "A very practical change in the construction of the
132 Real press has been introduced by Bindorf. The cylinder is fitted into a chair, the cover or seat of which is movable, so that by turning the same the press may be filled and connected with the tube."

(Witness read the above from Exhibit 16.)

This is the only source from which I got that idea.

X 23. Please state from what passage of the description you derived the idea of pressing the lower cylinder up against the drug.

Ans. (Reading from said exhibit:) "A second cylinder may be made of ordinary tinware—may be made fitting exactly into the first-mentioned cylinder, but which can be taken out and inserted

again easily. This second cylinder is provided along its entire length, in distances varying from ½ in. to 2 in. horizontal, with opposite openings made so as not to interfere with the durability of the cylinder. The outer cylinder is provided at the open end with movable hooks. The inner cylinder, after the outer one has received its contents, is placed upon the perforated plate. The hooks are forced into the horizontal opening mentioned, by which means everything is kept in its proper position.

X 24. Since you made the device have you received any explanations concerning the use to be made of the device up to the time of giving this deposition?

Ans. I have not. I only asked one question, viz., if the percolator would do.

X 25. Do you find, and, if so, where, in the description directions for making the funnel-shaped end below the flange removable?

Ans. (Witness reads from said exhibit:) "The cylinder must be open at the lower end. A funnel may, however, be placed underneath in order to prevent shattering and introducing impurities into the extract, but the lower opening must and should not be closed air-tight, as this would interfere with the efficacy of the machine.

133 X 26. Did you have no writing, sketch, or model other than what you have shown here either before or while or since making the device?

Ans. No, sir.

GEORGE L. HILL.

Attest: A. H. DAVIS, *Examiner.*

PORTLAND, *January* 15, 1884.

Present: William Henry Clifford, Esq., counsel for complainants; Wilbur F. Lunt, Esq., counsel for respondent.

Deposition of Charles C. Morgan.

Direct examination by WILBUR F. LUNT, Esq., counsel for respondent:

Int. 1. State your name, age, residence, and occupation.

Ans. Charles C. Morgan; 51 years; Boston, Mass.; lawyer, devoting attention especially to patent causes, and occasionally serving as a mechanical expert in patent matters.

2. State what experience and education you have had qualifying you to serve as an expert.

Ans. In my boyhood I was carefully instructed in the principles of mechanics, and was taught to some extent the use of tools by my father, who was a mechanical and civil engineer and who enjoyed a high reputation as a practical mechanician. From the age of four-

134 teen to eighteen I was engaged in learning the trade of a machinist and in practical manufacturing. At a later period, after spending several years in college and in the reading of my profession, I devoted about eight years to labors as an author

and editor, spending much of the time in writing on various scientific subjects. Since then I have been engaged a great part of the time in the care of patent business and the management of patent causes.

3. Please read the patent of Nathan Rosenwasser, Complainant's Exhibit A, and say whether you understand the same.

Ans. I have read said patent and believe that I fully understand the same, except, perhaps, the claim of the patent, which appears to me to be somewhat wanting in clearness.

4. In what respect do you regard the claim as wanting in clearness?

Ans. In respect to the phrase "a percolator, A," considered with reference to the foregoing portions of the patent. In the 22d line of the printed specification I find these words: "A is the main body of my percolator." Following this I find A mentioned repeatedly as the "container." Thus, in the 43d line it is said, "The container A is charged with any drug." From this point to the last paragraph preceding the claim A is mentioned only as the container, the phrase "container A" occurring five times in the specification. In Fig. 2 of the drawing A represents only (as already mentioned in the specification) the container or main body of the percolator, none of the internal apparatus being shown; but in the paragraph just before the claim of the patent I find this statement: "A stop-cock, H, may be used to govern the quantity of the menstruum admitted to the percolator A." The phrase "percolator A" thus used, it appears to me, may mean only what is before expressed in the specification by the words "container A" and the words "A is the main body of my percolator;" but it is possible in construing the claim the court may give a broader meaning to the phrase "percolator A" as it occurs therein, since, without such broader meaning, the claim does not appear to me to cover an operative combination.

135 5. State why, if the phrase "percolator A" is understood to mean only the main body or container, the claim does not, in your opinion, cover an operative combination.

Ans. Because without the presence in the main body of a perforated plate or diaphragm such as is described in the patent or the substantial equivalent thereof the combination mentioned in the claim would be practically worthless for percolating purposes. The patent describes this diaphragm and its function in the paragraph beginning with the 30th line, thus: "D is a perforated plate. This plate may, if desired, be replaced by any porous diaphragm or interposing substance, such as filter paper, cloth, pumice, or the like. This is to prevent the drug from escaping from the percolator during its use, and it is to be secured in position by suitable means." In this paragraph the patentee recognizes the fact that without the presence of a perforated plate or porous diaphragm or some interposing substance which would perform a like office the drug in the process of attempted percolation would escape from the percolator. The waste of the drug thus caused would so far result in a failure of the percolating process as would render the means employed substantially inoperative, and would lead to the immediate condem-

nation of the apparatus as worthless. For these reasons I regard the claim, when the phrase "percolator A" is understood to mean only the main body or container, as not covering an operative combination.

(Answer objected to as construing the claim.)

6. Please examine Respondent's Exhibit 10 and state how it compares with what is described and claimed in complainants' patent.

Ans. I have examined the same and find it contains parts which are correspondent with or substantially the same in their construction and mode of operation as the several parts mentioned in the claim of the patent. Exhibit 10 contains a vessel which is intended to serve as an elevated reservoir, corresponding with the ves-
136 sel G described in the patent. This vessel is provided at the lower end with a discharge pipe or nozzle fitted with a stop-cock, which performs the same office with the stop-cock H in Fig. 2 of the patent. To the discharge pipe just mentioned is attached a flexible rubber tube, which allows the reservoir or vessel containing the menstruum to be raised to a greater or less height above the percolating vessel. The lower end of this flexible tube is attached to a constricted inlet or mouth opening into the percolating vessel. This inlet corresponds substantially with what is described and claimed in the patent under a like name, or as a "restricted opening, B." The tube which constitutes this constricted inlet in the percolator of Exhibit 10 is provided with a stop-cock which may serve conveniently to regulate the flow of the menstruum. While there is no such stop-cock in the corresponding inlet of the percolator shown in the patent, its presence in the percolator of the exhibit makes no material difference when said stop-cock is opened in the flow of the menstruum through the inlet and in no way affects the function performed by this inlet. The lower part of the percolator of Exhibit 10 has an "enlarged open end, which serves the double purpose of a discharge or outlet and as an opening through which the percolator is charged with any drug from which an extract is to to made."

In this respect it corresponds perfectly with the enlarged open end C of the percolator shown in the patent, as such end is described in the paragraph beginning with the 24th line of the printed specifications. Through this large open end it is evident that the percolator of Exhibit 10 is to be charged with the drug intended for percolation, and that said drug is to be discharged or removed through it when the percolating process is finished. For convenience in collecting the fluid extract discharged through this large opening, I find a tunnel provided with a vertical rim fitted to the lower end of said percolator, so it may be attached to it or removed therefrom at pleasure. The presence of this tunnel is in no respect needful to the successful working of the percolator, but it may be dis-
137 pensed with at any time when found convenient and the percolating process accomplished quite as effectively with the open lower end of the percolator placed upon a rack in any large receiving vessel suitable for containing the fluid extract. Within

the main body of the percolator of Exhibit 10 I find two perforated plates or diaphragms. The lower plate is substantially the same as the plate D represented in the patent. It differs from the latter in shape, being concave upon the upper and convex upon the lower side; but this difference in no way interferes with its performing the same office as that performed by the plate D, but rather facilitates the performance of this office by allowing the percolated liquid to collect more readily in large drops near the middle portion of the lower side of said plate, so as quickly to fall away therefrom. The upper plate or diaphragm in the percolator of Exhibit 10 does not correspond to any piece shown in the complainants' patent. It is simply an additional device for facilitating percolation and for accomplishing the more thorough percolation of the entire mass of the drug contained in the percolating vessel. It is needless at present to explain the manner in which it operates for the promotion of this end. It is sufficient to say that it does not in any manner interfere with or lessen the effectiveness of such a percolating process as is accomplished by the percolator described and illustrated in the complainants' patent. The function of the several parts of the percolator of Exhibit 10, which corresponds to that of parts having a like office in the complainants' percolator, is precisely the same, and is in no respect modified by the presence of this additional diaphragm or upper perforated plate. For the reasons thus given I conclude that Respondents' Exhibit 10 contains, as I have before stated, parts corresponding with or substantially the same in construction and mode of operation as each of the parts described and claimed in the complainants' patent. I find, aside from the diaphragms which I have mentioned, in the percolator of Exhibit 10 an additional set of diaphragms, which may be substituted for the former.

138 The latter diaphragms are connected with each other by a rod on which is cut from the middle toward the ends reverse screw threads, one-half having what is termed a right-hand screw thread, the other what is termed a left-hand screw-thread. The diaphragms are pierced through the middle with holes provided with female screw threads corresponding with the threads on the halves of the rod to which, respectively, they are secured. By revolving the rod the diaphragms are made to approach or recede from each other, and thus to subserve convenience in packing the drug to be percolated between them, so it may be subject to greater or less pressure, and so that its expansion by absorption of the menstruum may be limited.

The top of the upper diaphragm is provided with four hooks, so that when inserted in the body of the percolator it may be turned about in such a manner that the hooks will pass over studs on the inside of said body near the top, and thus afford support for the two diaphragms and intervening rod. This device of the two diaphragms and connecting rod is simply an additional convenience, which may be used at any time, when preferred, in place of the diaphragms above described. The arrangements by which the body of the percolator is adapted to receive and support this device in no way interferes with or modifies the functions of the percolator as

respects its suitableness for the former device, whether only the lower diaphragm of the former is used or both the lower and the upper.

In further examining the percolator of Exhibit 10, I find a small tube provided with a screw cap set in the top of said percolator, near one side of the tube, which has been mentioned as the constricted inlet. This tube with the screw cap evidently is designed to serve the purpose of a convenient air escape, through which the air may readily pass off from the upper part of the percolator when the percolating fluid is first let into the percolator. It does not in any manner modify the functions performed by other parts of
139 the device which have already been described; it is simply a trifling convenience, which may be used or not as desired. In concluding the comparison which is called for in the present interrogatory I may further state that I find in Exhibit 10 the entire combination which is set forth in the claim of complainants' patent.

7. Please examine Complainants' Exhibit G of the respondent's percolator which is claimed to be an infringement of the complainants' patent; also Complainants' Exhibit E of respondent's patent on said percolator, and state how said percolator, with the exception of the parts claimed in said patent, compares with the percolator in Respondent's Exhibit 10.

Ans. The two are substantially the same, except that Exhibit G of the respondent's percolator has no stop-cock in the constricted inlet or tube at the top, and has no small tube with a screw cap for an air escape. The rod and diaphragms with their means of support in Exhibit G are substantially like the diaphragms and screw rod connecting the same which have been mentioned in my answer to the last interrogatory, and are substantially like what is claimed in Exhibit E of respondent Berry's patent.

8. Please examine Respondent's Exhibit 14 and state how it compares with what is described and claimed in complainants' patent.

Ans. I have examined Respondent's Exhibit 14, which is a drawing of a percolating apparatus, and I find it contains all the essential elements of the combination which is claimed in the complainants' patent. It has an elevated reservoir A, which is substantially the same as the elevated reservoir or vessel G in complainants' patent, a rubber tube B, connecting said reservoir with a percolator below, which tube is substantially the same as the adjustable tube F of the complainants' patent. The mouth of the percolator to which the rubber tube is attached is a narrow or constricted inlet like the restricted opening B of the complainants' patent. The body of the percolator is substantially like the main body A of the
140 percolator described in complainants' patent. I observe no material difference in the form of this body and no difference in any particular which is made the subject of description and claim in the complainants' patent. Exhibit 14 represents a diaphragm or perforated plate, E, set at the lower end of the main body of the percolator instead of being put inside of the percolator like the diaphragm D in Fig. 1 of the complainants' patent, but I do not regard

this difference in position with respect to said diaphragms as material, since no fixed position for the diaphragm D is described in the complainants' patent, but only such a position indicated as will enable the diaphragm to prevent the drug from escaping from the percolator during its use. The suggestion of the latter position is found in the sentence beginning in the 33d line of the printed specification. The position of the diaphragm E in Exhibit 14 is such as serves this purpose. It is sustained in the flaring mouth of a funnel-shaped tube and affords support for the main body of the percolator which rests upon it.

The lower end of the funnel-shaped tube appears to be inserted in the mouth of a bottle or other vessel suitable for receiving the fluid extract.

There is no stop-cock in the discharge pipe of the elevated reservoir represented in Exhibit 14 like the stop-cock H in Fig. 2 of complainants' patent. But this difference I regard as immaterial, since there is no claim in the patent which covers the use of such a stop-cock, but it is merely described in the last paragraph preceding the claim of the patent as a thing which "may be used to govern the quantity of the menstruum admitted to the percolator A," the employment of the stop-cock thus being left optional. In Exhibit 14 a very simple device appears to be used in connection with the rubber tube B for controlling the flow of the menstruum, this device being a common spring clothes-pin, which in the dia-gram is marked C.

141 9. Please examine Respondent's Exhibit 14*a*, also Figs. 10 and 11, plate I, in Respondents' Exhibit 12 (said figures being referred to by the description in said Exhibit 14*a*), and state whether or not you find any correspondence, and, if so, what, between the mechanisms specified therein and those set forth in complainants' patent.

Ans. I have examined said exhibits and find a correspondence between certain mechanisms specified therein and those set forth in the complainants' patent. In the beginning of said Exhibit 14*a* I find these words: "The Real press consists principally of a hollow cylinder, which contains the powdered substance to be exhausted between the two perforated plates, tightly packed, so that the substance cannot move to either direction. If the cylinder is open at both ends a cover is fitted air-tight at one end, having a hole in the center into which a long tube is fitted, also air-tight. Between the cover and the perforated plate mentioned some space must remain. In extracting the cylinder is placed vertical, so that a vessel for gathering the liquid may be placed underneath. Through the tube, which may be as narrow as desirable (only no capillary tube), liquid is poured upon the substance, and the tube must be kept full continually. The menstruum penetrates the substance and leaves the apparatus at the lower end of it impregnated with the soluble portions of the substance."

In the mechanism thus described I find all the material parts of the percolator which are described in the complainants' patent. These parts comprise a main body which is correspondent to the

main body A of the percolator specified in complainants' patent, the only difference being a provision with reference to said main body or cylinder mentioned in Exhibit 14*a*, that if it is open at both ends a "cover is fitted air-tight at one end, having a hole in the center into which a long tube is fitted, also air-tight."

The cylinder when thus covered at one end and open at the opposite end is substantially the same and would perform pre-
142 cisely the same office as the cylinder A of complainants' patent. The hole mentioned in the center of the air-tight cover into which a long tube is fitted corresponds with and is substantially the same as the constricted inlet B specified in the patent. The two perforated plates mentioned in the passage first quoted in my answer from Exhibit 14*a* appear to be substantially the same as the two perforated plates or diaphragms first mentioned in my answer to Int. 6 concerning Respondent's Exhibit 10; and the views which I have expressed in that answer respecting the substantial likeness of the lower one of these plates or diaphragms to the plate or diaphragm D mentioned in complainants' patent, and as to the substantial correspondence in the functions thereof, are equally applicable in the present instance to the substantial likeness of the lower one of these plates of the Real press and of the office which it performs to the plate D of complainants' patent and to the office performed thereby.

Referring to about the middle of the description contained in Exhibit 14*a* I find a description of some improvements of the Real press. This description contains the following: "A very practical change in the construction of the Real press has been introduced by Beindorf. The cylinder is fitted into a chair, the cover or seat of which is movable, so that by turning the same the press may be filled and connected with the tube. The empty space in the cylinder is filled out with tin rings, the apparatus being closed by a funnel fitting by means of hooks in the circular projection mentioned above." (For illustration of the device just mentioned see Figs. 10 and 11, plate I of book, Exhibit 12.) * * * "The filled cylinder, turned bottom up, is placed upon a chair having a hole in the middle, in which the cylinder fits and around which he (it) rests by means of the circular projection above mentioned. A vessel to receive the liquid is placed beneath. The cylinder must be open at the lower end. A funnel may, however, be placed underneath in order to prevent spattering and introducing impurities into
143 the extract; but the lower opening must and should not be closed air-tight, as this would interfere with the efficacy of the machine. The upper or empty space is filled with the liquids to be extracted. In the opening in the bottom a tube is fitted, which may be made of tinned iron, glass, wood, leather, etc., or any tube may be used." * * * "A cork fitting into the opening of the bottom is perforated, and into the perforation the lower end of the tube is introduced so as to protude sufficiently." * * * "Near the upper end of the tube is placed a vessel containing the menstruum, the surface of which must be somewhat lower than the end of the tube. A syphon is now introduced into the liquid and in the

tube; air sucked through the tube, so that the liquid will commence to flow through the syphon, which is thereby filled. The column of menstruum thus obtained acts, pressing and dissolving upon the substance to be extracted. It penetrates it, and arrives laden with the soluble matter contained in the substance at the lower end of the apparatus, often in a syrupy consistence." * * * "In order to control the apparatus, stop, or continue the operation the tube is provided with a cock, which may be closed if necessary, or the upper end of the tube may be closed after removing the syphon."

(Adjourned to January 16, 1884, 10 a. m.)

JANUARY 16, 1884—10 a. m.

(Answer to 9th int. continued:)

In the passages just quoted the translation appears to be occasionally lacking in such exactness of English expression as would be desirable—a fact which may be due to its having been made by a translator who was not acquainted with English as his
144 mother tongue. Nevertheless, the meaning is so far apparent to my mind when considering these passages in connection with the drawings referred to and in respect to what the question calls for that I am confident I well understand the same.

In two sentences I find the word "bottom" used with reference to the end of the cylinder, which, when in actual use during the percolating process, doubtless stands at the top. Thus, it is said, "the filled cylinder, turned bottom up, is placed upon a chair," etc. In the process of filling with the drug or other substance to be percolated it appears from the description and cuts that the cylinder is inverted; therefore, when charged, preparatory to percolation, it is reversed or turned the other end up, so that the part which was previously at the bottom, but which is really the top of the cylinder, is turned up. Again, I find these words: "In the opening in the bottom a tube is fitted, which may be made of tinned iron, glass, wood, leather, etc., or any tube may be used." Here the word "bottom" appears to be used with reference to the top of the cylinder when the latter is inverted. In the cut, Fig. 11, the tube is shown connected with the top of the cylinder as it stands on the chair or stool in position for percolation.

In Fig. 10 the tube represented appears also to be attached to the top of the cylinder, which is a slight modification, in some respects, of the cylinder represented in Fig. 11. The inlet or opening in the top of the cylinder to which the tube is attached is a constricted inlet, corresponding to the inlet B of complainants' patent. As the description says a tube made of leather or any tube may be used, I understand there may be employed in connection with this percolator a flexible or adjustable tube, such as will permit the vessel containing the menstruum to be raised to a greater or less height above the percolator, according as more or less pressure is desired upon the contained drug. That different degrees of pressure may be desired, and may be secured by varying the height of the column

of liquid in the tube, appears from various passages in this
145 translation. Thus it is said: "From the hydrostatic laws explained on page 28 it is clear that every column of liquid exerts a pressure on its base in proportion to its height." Further on it is remarked concerning the tube: "The height of it must be from 10 to 12 feet." * * * "It is usually believed that the column must be a good deal higher—30 to 60 feet." * * * "According to my experience the height of from 8 to 12 feet, as stated, is sufficient for pharmaceutical purposes." The description mentions that "the tube is provided with a cock" "in order to control the apparatus, stop, or continue the operation." Such a cock would stand in the same relation to the percolating apparatus as the stop-cock H of the discharge pipe with which the adjustable tube is connected, as shown in Fig. 2 of the complainants' patent; but, as I have before remarked, such a stop-cock is not one of the essential elements of the combination claimed in the patent, and is only mentioned as a convenience which may be used, the omission of which would not lessen the effectiveness of the percolating device.

In the passage I have quoted, respecting the change in the Real press introduced by Beindorf, it is stated that near the upper end of the tube is placed a vessel containing the menstruum, and a mode of drawing the menstruum from this vessel through the tube by means of a familiar device known as a syphon is described. This vessel, connected by the syphon with the tube, is shown in Fig. 10. It is substantially the same, as respects its relations to other parts of the percolating device, as the elevated reservoir or vessel G described in the complainants' patent. The tin rings mentioned in connection with Beindorf's percolator, I understand, are simply to hold the diaphragms or perforated plates in proper position, according as more or less material to be percolated is used in the cylinder.

The patent says of the diaphragm or perforated plate D: "It is
to be secured in position by suitable means." The rings
146 of Beindorf's percolator are merely one of various suitable means which an intelligent mechanic or druggist might use. The cut, Fig. 11, as well as the descriptive text, shows that the percolating cylinder may be used with the whole lower end of the cylinder left open or with a funnel attached for the purpose of collecting the fluid extract and conveying it into a small vessel or in order to "prevent spattering and introducing impurities into the extract." The representation of the cylinder in an inclined position shows it without the funnel, the latter being represented as detached and lying below. The representation of the cylinder in a vertical position shows it with the funnel attached. In view of what I have before remarked, concerning the internal structure of the percolator, also in view of the fact that no essential change by Beindorf, in respect to the diaphragms, is described, but only such a change as may serve convenience of support for the diaphragms, I am of the opinion that there is embraced in the percolating apparatus described in its translation from the German, Exhibit 14*a*, the entire combination which is contained in the complainants' patent.

10. Please examine Exhibit 15 and state how it compares with what is described in Exhibit 14*a* and is illustrated by the figures referred to in said description.

Ans. I have examined Exhibit 15, and I find that it presents, in the main, such features as are correspondent with certain of those described in Exhibit 14*a* and are illustrated by certain parts of the figures referred to in the description. The description, after referring to such a cylinder for percolating purposes as has been described previously and which is such as was mentioned in my answer to the last interrogatory, says: "A second cylinder of tin may be made of ordinary tinware (Weissblech), fitting exactly into the first-mentioned cylinder, but which can be taken out and inserted again easily. This second cylinder is provided, along its entire length, in distances varying from one-half to two inches, with
147 horizontal opposite openings, made so as not to interfere with the durability of the cylinder. The outer cylinder is provided at its open end with movable hooks. The inner cylinder, after the outer one has received its contents, is placed upon the perforated plate. The hooks are forced into the horizontal openings mentioned, by which means everything is kept in proper position." In Exhibit 15 I find a second cylinder thus made and fitting into an outer cylinder, the latter of which is so constructed that it may be charged with the drug to be percolated through the large open mouth at the lower end, when such outer cylinder is in an inverted position. The diaphragm or perforated plate in this outer cylinder is prevented from being forced up close against the top of the cylinder by an intervening ring of tin. For convenience in removing and inserting such diaphragm and ring the diaphragm is soldered to the lower edge of the ring; but the ring would serve the same purpose in holding down the diaphragm at the desired point below the top if the two were not thus fastened together.

The second or inner cylinder is provided along its length with small holes at corresponding points on opposite sides, the holes being about a half inch apart. The outer cylinder is provided at its open end with movable hooks, which may be inserted in the holes just mentioned so as to fasten the two cylinders together, leaving more or less space between the top and bottom of the same, according as it may be desired to charge the percolator with more or less material. At the top of the inner cylinder I find a diaphragm which is soldered to it, in order that it may be conveniently held in place and easily inserted in and removed from the body of the outer cylinder. This diaphragm would serve the same purpose if placed in like position without being so fastened to the top of the inner cylinder. In that part of the description contained in Exhibit 14*a* which mentions the empty space in the cylinder being filled out with tin rings it also speaks of the apparatus being
148 closed by a funnel. I find in Exhibit 15 a funnel so applied to the lower end of the inner or second cylinder. The funnel is substantially such as is shown in the lower part of Fig. 11, except that it is unprovided with hooks for fastening it to the cylinder. A tube some ten feet in length is inserted in the upper end of the

outer cylinder, the top of which widens into a funnel shape. This tube is substantially like the tall tube with a funnel-shaped mouth which is shown in Fig. 11. It is fitted to the cylinder by means of a screw thread, so that, while it is removable for convenience when the cylinder is to be inverted and charged, it may fit the cylinder nearly or quite air-tight during the process of percolation. I observe nothing in Exhibit 15 which is not substantially described or illustrated in the description mentioned and the figures referred to therein, except merely the soldering of the diaphragms to the part which they are connected; but this soldering of the diaphragms is merely an additional convenience, such as might suggest itself to the mind of an intelligent mechanic, and, as I have before observed, is not essential to the effective working of the percolator.

11. Please give your views as to the importance of the following statement in the German translation, Exhibit 14*a*, to wit: "Between the cover and the perforated plate mentioned some space must remain."

Ans. The maintenance of such an open space in the upper part of the percolating cylinder I regard as quite important, for the following reasons, viz: When the drug to be percolated has been placed in the cylinder between this perforated plate and the plate or diaphragm below and the percolating fluid has been admitted to the drug the expansion of the drug by the absorption of liquid, if it were such as to force the diaphragm at the top up against the beak or constricted inlet of the cylinder, would partially close this inlet and thus arrest in a measure the flow of the menstruum. Moreover, the liquid would not so readily flow out over the whole
149 upper portion of the drug and thoroughly percolate or leach the same. The percolator would not be inoperative without such an open space, but only be less effective.

12. Please look at complainants' patent and state to what extent, in your judgment, it requires the lower end of the percolator to be kept open during practical use.

Ans. It is quite evident from the patent that the lower end of the percolator described is to be kept open during the process of charging it with the drug to be percolated, and that it is likewise to be kept open when removing such drug after it has been percolated. This is evident from what is stated in the paragraph beginning with the 24th line of the printed specification and in the sentence beginning at the 45th line of the specification. The patent may also mean that the enlarged mouth or lower end of the cylinder is to be kept open during the percolating process, since it says of the apparatus in respect to percolation: "When thus used the enlarged mouth C becomes the ultimate discharge." (See ll. 73–75.) The significance of this sentence is a matter of construction by the court.

Cross-examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

X 13. Is or not the device, Complainants' Exhibit G, substantially the same as that exhibited in Fig. 2 of the respondent's patent when

viewed in connection with the parts of the descriptive portions of the specification applicable to it?

(Objected to; not inquired of in the direct.)

Ans. So far as I observe it is, except that I do not find any stop-cock corresponding to the cock M in the beak or upper tube of Exhibit G.

X 14. Do you or not understand that the vessel illustrated in Fig. 2 is filled, first removing the funnel-shaped portion B and lower diaphragm D, holding the vessel so that what is represented
150 in the drawing as the lower end is for the time uppermost, placing the drug onto the concave face of the diaphragm provided with hooks, replacing the other diaphragm upon the drug, and then turning the vessel into the position indicated in Fig. 2 of the patent?

(Same objection.)

Ans. Yes; the two diaphragms, however, being fastened together by the screw rod and at such distance apart as will properly compress and hold the intervening drug before the vessel is turned into the position shown in Fig. 2.

X 15. Of necessity from the structure of the chamber the exhausted drug is emptied through the mouth—illustrated as closed, or nearly so—by the funnel-shaped piece B, is it not?

(Same objection.)

Ans. It is.

(Adjourned to Jan. 17, 1884.)

JANUARY 17, 1884.

X 16. In Complainants' Exhibit A, Rosenwasser's patent, is it not the fact that the vessel is described as being charged through the end C and against the end in which the nozzle B is inserted, the plate D then introduced and placed upon the contents, and the whole vessel then inverted previous to the process of percolation?

Ans. I should say that the description indicates such a process.

X 17. Is it not the fact that in both of these devices—the one illustrated in Fig. 2 of the Berry patent and the other in Fig.
151 1 of the Rosenwasser patent—that the drug preparatory to and during percolation is to be held confined between two diaphragms or plates?

(Objected to; not in direct.)

Ans. No; such is the fact with reference to the Berry patent, but in Fig. 1 of the Rosenwasser patent I find only one diaphragm represented.

X 18. Does or not the upper end piece of the vessel seen in Fig. 1 of the Rosenwasser patent aid in the confinement of the drug during percolation?

Ans. It does, provided the vessel is sufficiently filled with the drug above the diaphragm D so that when the drug is saturated its expansion will suffice to bring it against the top of the vessel.

X 19. Does or not the upper diaphragm in Fig. 2 of the respondents' patent aid in the confinement of the drug during percolation?

(Same objection.)

Ans. It does.

X 20. Does or not the upper diaphragm in Fig. 2, respondents' patent, by means of its perforated state admit the menstruum to flow upon and into the drug?

(Same objection.)

Ans. Yes; it does.

X 21. Does not the upper end or fixed plate of Fig. 1, Rosenwasser's patent, in consequence of its perforated condition, permit the menstruum to flow upon and into the drug?

Ans. Yes; through a single hole, the size of the beak.

X 22. After the drug has been placed upon the upper diaphragm, Fig. 2, respondents' patent, is or not the said diaphragm intended to be stationary and the compression exerted upon the drug to be produced by the movement towards the hooked plates of the other one, which in said Fig. 2. as the vessel is there placed, is the lower one?

Ans. The compression is so produced at the outset, and sub-
152 sequently the pressure upon or compression of the drug is increased by the absorption of the menstruum into the drug while it is thus confined.

X 23. Then the specification of respondents' patent, beginning on line 45, to wit: "So that if the screw-rod be turned the diaphragms will be caused to approach toward or recede from each other" is not strictly correct, is it?

(Same objection.)

Ans. If we understand these words as meaning the movement of both diaphragms toward or from each other, this would not be strictly correct in some cases; but in other cases when the percolator is inverted and the hooked diaphragm pushed down against the end of the cylinder, through which the menstruum is admitted, and then the drug placed loosely upon it, so as to fill the cylinder, and then the opposite diaphragm is applied and the screw-rod which connects them is turned, so as to compress the drug with such closeness as would prevent a too ready flow of the menstruum through it, then both plates would be alike moved and would approach each other, and there would be nothing to prevent the upper plate from moving toward the lower one until the upper plate was fastened by its hooks upon the studs *k*. So in removing the drug after percolation, when the screw-rod is turned in such a way as to liberate the lower diaphragm, there would be nothing, so far as I can perceive, to prevent the two diaphragms receding from each other, since the hooks

of the upper diaphragm, when placed over the studs *k*, do not serve to prevent the upper diaphragm from rising.

X 24. Will you explain how you are going to push the hooked diaphragm up to the end of the cylinder with the studs *k* located and described as seen in the patent?

Ans. On renewed observation of the respondents' percolator, which, in my direct examination, I was not required to inspect with reference to his patent therefor, I find that I was mistaken in my impression that there were small slots in the edge of the upper diaphragm,
153 which would allow it to pass the studs *k*. My former answer, therefore, was incorrect, so far as it assumed that the upper diaphragm would pass beyond such studs and would allow of the movements predicated upon the assumption that it would thus pass beyond.

X 25. Your attention was called, I believe, to Complainants' Exhibit G, and is not the error equally apparent from that exhibit?

Ans. It is true that I was requested to examine Exhibit G, but not in such a manner as to call special attention to the point now under consideration. This exhibit does show that the upper diaphragm will not pass beyond the studs *k*.

X 26. Now, then, is it not plain from the respondent's patent, Complainant's Exhibit E, as well as from Exhibit G, that the studs *k* are in the interior wall of the cylinder, and does it not appear from the specification of the patent that the diaphragm D, having the hooks secured to it, is to be previously locked in place before the drug is filled in or the percolation takes place?

Ans. It does appear that the studs *k* are in the interior of the cylinder. It does not appear conclusively, to my mind, from the mere language of the specification, that the hooked diaphragm is locked in place before the space between the diaphragms is filled with the drug, although this may be implied, and in practice I have little doubt that this would be the usual mode. In the paragraph beginning with line 60 of the printed specification I find the mode of filling the cylinder with the drug described. It says: "Any suitable quantity of any drug is placed on the diaphragm D. The second diaphragm D is then placed upon the rod and the wrench applied, which causes the diaphragms to approach each other in order to compress the material between them. The diaphragm D having been previously locked in place, as before described, the cover B is replaced." The manner of locking is described in the latter part of the foregoing paragraph, but no direction is given therein for such locking before the drug is introduced. Ac-
154 cordingly, it appears to me that the sentence that I have last quoted may mean, when it speaks of the diaphragm having been previously locked in place, a locking in place, in the manner before described, previous to the cover B being replaced, but I do not undertake to give a positive construction to this passage, since I do not consider it within my province as an expert.

X 27. Then the only difference there may be between you and me on this point is that you think the hooked diaphragm might, within the language of the specification, be locked just previous to

putting on the telescoping cover B and the inversion of the vessel preparatory to percolation; am I correct?

Ans. The specification does not appear, to my mind, to positively militate against this.

X 28. Will you now explain how it would be possible, after the drug was filled in upon the hooked diaphragm and the lower diaphragm placed on the rod, to get at the upper diaphragm and turn it in place?

Ans. I think it would be possible to turn both diaphragms, together with the drug compressed between them, by manipulating the lower one, and that by thus turning them, as bound firmly together by means of the screw rod, the upper one might be locked in place.

X 29. Do you think that such a method is admissible from the order and sequence of the specification, which is as follows:

First. "The screw rod and diaphragms are supported within the cylinder A by two or more hooked projections, *i*, secured to the convex side of one of the diaphragms, which engage with two or more studs, *k*, in the wall of the cylinder." * * *

Second. "In charging or filling the filter the cover is removed from the cylinder and one of the diaphragms from the rod. Any suitable quantity of any drug is placed on the diaphragm
155 D." * * * "The diaphragm D having been previously locked in place, as before described, the cover B is replaced."

Ans. I do. In my opinion, any method which is practicable in the use of this percolator would be admissible within the terms of the patent, since the patent makes no claim for a process, and it may be presumed, therefore, that it describes only such method or process as is deemed convenient.

X 30. Your theory is that the two diaphragms, compressing the drug between them so tightly that the screw will turn no more and move the diaphragms no more, you could then move the diaphragms, rod, and drug as one body, so as to pass the hooks over the studs. That would be too great a compression of the drug for percolation. After you had got your upper diaphragm in place you would need to loosen up the lower one. Now, wouldn't the same force of compression that served to rotate the other disk and hook the hooks onto the studs be sufficient at the start, when you attempted to reverse the direction of the screw, also to unhook the hooks?

Ans. I have only stated in my former answer what seems to me possible, and do not go so far as is assumed in the theory attributed to me in the present interrogatory. I have said nothing in regard to the drug being compressed "so tightly that the screw will turn no more and move the diaphragms no more;" yet, even if compressed more tightly than would be desirable for percolation, I see no difficulty in turning the screw while the lower diaphragm is held so as to prevent its revolving without turning the upper disk or diaphragm so as to unhook it, since the pressure of the drug upon the inner surface of the cylinder and from the broad upper surface of the lower diaphragm to the broad under surface of the upper diaphragm I think would be sufficient to keep the upper diaphragm

from being turned by so slight a force as the friction of the screw thread within it.

X 31. I presume you will admit, dismissing any verbal criticism as to what the words of the respondent's patent might pos-
156 sibly signify, that it was the probable intention of the inventor to hook the upper diaphragm in place before filling in the drug?

Ans. I do not feel warranted as an expert in drawing any positive conclusions from the patent on this subject, and I deem it beyond my province as such to express any opinion as to what was the probable intention of the inventor, since such opinion would necessarily be based upon conjecture as to what he might find convenient.

X 31½. Do you testify that the language of the respondent's patent, beginning with the words "the screw rod," in the 61st line, and ending with the words "before described," in the 69th line, is equally applicable to locking the hooked diaphragm in place after the drug and other diaphragm have been placed in the vessel as to the locking of the hooked diaphragm in place previous to the introduction of the drug?

Ans. While it appears to me that the question calls for such an expression of opinion on my part as is hardly within the province of an expert, I am nevertheless pleased to answer that, in my judgment, the language referred to may be applicable to either of the methods just mentioned, and that I am confirmed in the view that it may be applicable to the first of these methods by observing the fact that while the first sentence quoted in the interrogatory describes the means by which the screw rod and diaphragms are supported within the cylinder, the second sentence describes the mode in which they may be disengaged; and this statement of the mode of disengaging is the last statement preceding the explanation of the manner of charging or filling the percolator.

X 32. I inquired if, in your judgment, the language was equally applicable to the two sets of circumstances stated in the former inquiry, and if you so testify.

Ans. Again disclaiming any wish to transcend my province as an expert, I answer that I do deem the language equally applicable to the two sets of circumstances, but I wish to add that in so
157 stating I do not mean to say that in general I should regard the two methods as equally convenient.

X 33. Now, taking the method of first locking the upper diaphragm in place, the Berry patent shows, does it not, a diaphragm locked in place, upon which the drug is placed, and a movable diaphragm to confine the drug between the two and to regulate the pressure for percolation; and the second method simply changes the condition by locking the hooked diaphragm into place before closing the cylinder, does it not?

Ans. The Berry patent shows in Fig. 2 the upper diaphragm locked in place. It also shows the lower diaphragm connected therewith by means of the screw rod E. The figure itself gives no indication of any fact which would limit the process of charging

the percolator to a single method. I do not find, therefore, in the patent anything which justifies the inference that the adoption of the second method mentioned in the interrogatory is a mere substitution of the same for a former method which it appears to prefer.

X 34. You have said that the passages between lines 51 and 69 admit equally well of two constructions. One of them is that the hooked plate may be locked before the drug is put in; the other one is that it may be locked after the drug is put in. Now, I ask you again, if the first-named construction of these phrases would not give us a hooked diaphragm locked in place and upon which the drug is placed, and then the second diaphragm moved into place before the process of percolation?

Ans. It would.

X 35. Does or not the complainants' patent, Exhibit A, show a vessel in which the drug is to be filled against the fixed end or disk thereof, after which the movable diaphragm D is represented as placed against the drug, thereby confining it in the vessel?

Ans. The complainants' patent does show a fixed end against which the drug is to be filled, but I should hardly call this end
158 a disk, and it is certainly wanted in a fixed resisting medium at an important point, namely, the beak or inlet at the top, which presents an opening so large as to allow the drug to press up into it to a considerable height. When the percolator has been charged with the drug I understand that the movable diaphragm D should be placed against it, so as to confine it in the vessel.

(MEMORANDUM.—Counsel for the complainants puts certain questions to the witness upon the written translation by H. C. Hiepe, not admitting the accuracy of the same.)

X 36. Looking at Exhibit 14*a*, from the commencement to and including the word "tight" (first word, l. 13, p. 4), please state what description you find of a percolator to be charged through the bottom end, held uppermost and against the fixed plate, the drug to be confined by a movable lower plate and the vessel to be reversed again previous to the process of percolation. I do not ask you if you find one or more or any number less than the whole of these elements, but if in the passages referred to you find all of them combined to constitute one implement or device to carry on percolation.

Ans. I find on the first page of said exhibit mention of a hollow cylinder provided with two perforated plates, between which the powdered substance to be exhausted (that is, as I understand, to be thoroughly percolated) is to be tightly packed. I find a remark following: That "if the cylinder is open at both ends" certain other parts are to be provided. The remark implies that the cylinder may be made either open at both ends or with one end closed; but it is said that if it "is open at both ends a cover is fitted air-tight at one end, having a hole in the center into which a long tube is fitted, also air-tight." Furthermore, it is said: "Between the cover and the perforated plate mentioned some space must remain." To preserve such a space it is obvious that any suitable means may be em-

ployed for fixing such perforated plate in the desired position, so that it will not raise against the cover by the pressure of the
159 drug below; or, if the cylinder is filled from the opposite end while in an inverted position, the perforated plate will not fall down against the cover. Any mechanic of ordinary intelligence would readily provide such suitable means for securing the plate. As it is stated that the solid substance to be exhausted is tightly packed between two perforated plates, it is apparent that when the first plate just mentioned has been placed in the cylinder and properly secured in position so as to leave some space between it and the cover, that the powdered substance or drug to be percolated must be introduced into the cylinder through the opposite open end while the cylinder is held in an inverted position, and that the second perforated plate must be introduced and pressed down upon it and fixed in place so as to tightly pack the drug.

It is quite clear to my mind from the description that after the percolator has been so charged with the drug it is to be again placed in a upright position preparatory to the percolating process. This is plainly indicated by the fact that the cover, which would be at the top when the percolator is restored to the position just mentioned, has a hole in the center into which a long tube is fitted air-tight, and from the statement that "through the tube" * * * "liquid is poured upon the substance, and the tube must be kept full continually. The menstruum penetrates the substance and leaves the apparatus, at the lower end of it, impregnated with the soluble portions of the substance." It is evident from this that the tube must be in an upright position, or above the body of the percolator, so that menstruum will flow down through it into the material to be percolated, and will be discharged at the lower or open end of the percolating cylinder. This is further evident from the following remarks concerning the pressure exerted by a column of liquid being in proportion to its height.

X 37. Then you consider, do you not, that, as descriptive of the means of securing a diaphragm within the cylindrical per-
160 colator, the use of the words "and secured therein by suitable means," in the light of the state of the art, is a sufficient specification to an intelligent mechanic for that purpose?

Ans. Yes, as respects such suitable means as were known at the date of the application for the patent.

X 38. Will you point out the passages in the extract referred to which exclude the idea of the cylinder's being charged from the top—an air-tight but removable cover, having also an air-tight tube connected with it, being then put onto such top end and percolation proceeded with?

Ans. I find no passages which would exclude the idea of its being so charged. It appears to me that when the cover was removed it could be charged with equal facility at either end.

X 39. Then will you testify that you find any specification in this extract that the cylinder is to be charged at the lower end turned upwards, and afterwards turned back?

Ans. Only by implication; but the implication is very plain that

the cylinder may be so charged, and may be charged as readily in the way specified in the question—the lower end being turned upwards and afterwards turned back—as in the opposite way. It must be charged in one of these ways. The description of the mechanism shows this conclusively, and the user, therefore, is left to his choice of either of these two obvious ways.

X 40. I call your attention to the fact that I have asked if you found in the extract referred to any specification that the cylinder is to be charged at the lower end turned upward, and afterward turned back, and not your implications. Will you please point out the specification of these facts in the language of the exhibit?

Ans. The implications above-mentioned are not mine, but are such as necessarily arise from the description of the mechanism and of its mode of use, so far as stated. I do not find in the ex-
161 hibit anything which states explicitly that the cylinder is to be charged at the lower end turned upward, and afterwards turned back.

(Adjourned to Jan. 18, 1884.)

JANUARY 18, 1884.

X 41. Referring now to the patents of complainants and respondent, is not the capacity of the lower diaphragm to be adjusted as desired, in relation to the drug in the percolator, an essential feature in both and to the operation contemplated in the use of both devices?

Ans. It is.

X 42. Calling your attention to the second page of Exhibit 14*a*, at the commencement of the paragraph and down through to the bottom, please select the passages that describe a percolator to be held bottom up, charged, adjusted, and then tipped back again before percolation.

Ans. The portion of the second page of Exhibit 14*a* which is referred to in the question contains no passages which, taken wholly independent of the context or of parts which I have referred to in connection with this page in my previous testimony, describe a percolator to be held, charged, adjusted, and tipped as described in the question, but, in my opinion, the exhibit should be construed as a whole or in view of the relations which properly subsist between its several parts.

X 43. Then you consider, do you not, that the descriptions following on pages 3 and 4, down to the word "tight," inclusive, describe a modification, by the use of a second cylinder, of the device described on page 2 of said exhibit?

Ans. I consider that the descriptions mentioned in the question include a description of a modification by the use of a second cylinder, but I do not perceive that this fact is to be inferred in any way from my last answer.

162 X 44. You have testified, if I understand you correctly, to the effect that Exhibit 15 is a correct embodiment of the description on page 2, in connection with the modifications following, on pages 3 and 4, down to "tight," inclusive. Am I correct?

Ans. No; I have not so testified, but I have testified substantially that it is a correct embodiment of what is described in the passages to which you refer, taken in connection with certain other passages which appear in the exhibit, and in connection with the drawing, Fig. 11, which is referred to in said exhibit. I have stated, however, in my previous testimony that Exhibit 14*a* contains no mention of soldering the diaphragms to the pieces to which they are attached, and in the passages to which you refer there is no mention of the tube widening at its upper end, as is stated on p. 6 or as is represented in Fig. 11.

X 45. Beginning on the top of p. 3 and going on through p. 4 to "tight," inclusive, please indicate the authority in that description for thrusting the cylinder containing the holes with the diaphragm in Exhibit 15 into the bottom end of the half containing the hooks.

Ans. I am somewhat averse to giving constructions of limited portions of the Exhibit 14*a*, divested of their proper connection with other parts, since this seems to me an incorrect method of ascertaining their meaning, yet, in reply to the interrogatory referring to such limited portions, I say that I find on the third page of the exhibit this statement: "The outer cylinder is provided at its open end with movable hooks." From this I should infer that the opposite end of the outer cylinder is closed. Following the sentence just quoted I find in the exhibit this statement: "The inner cylinder, after the outer one has received its contents, is placed upon the perforated plate, the hooks are forced into the horizontal openings mentioned, by which means everything is kept in proper position."

Referring now to the second sentence on p. 3, I find an
163 explanation of the character of the openings just mentioned, into which the hooks of the outer cylinder are forced. These openings and hooks correspond substantially with what are shown in or upon the two cylinders of Exhibit 15. It is apparent from the description on p. 3 that the inner cylinder containing the horizontal openings for the insertion of the hooks is meant to be thrust into the outer cylinder after the latter has been charged; or, in the language of the exhibit, "has received its contents." To be so placed it must of course be inserted or thrust into the open end of the outer cylinder.

As I am precluded by the limitations of the question from referring to parts of the exhibit preceding p. 3 in order to show that the closed or covered end of the outer cylinder is the top end with which the tube is connected during the process of percolation, I can only refer in demonstration of this fact to Fig. 10 of copper plate which is mentioned in that part of p. 3 which contains the passage written in pencil and beginning with a parenthesis mark. This passage, "See figure 10 of copper plate," I understand to be a part of the translation and properly appertaining to the exhibit. Turning now to Fig. 10, which I find in plate I of Respondent's Exhibit 12, and which I understand is admitted to be the figure referred to, I find a representation of what, it seems to me, is meant for two cylinders connected, the upper one being meant for the outer cylinder and having the tube conveying the menstruum connected with

it and the lower one the inner cylinder. While the cut does not appear to me absolutely perfect, nevertheless it seems to me sufficient for the guidance of an intelligent mechanic. The holes or openings to receive the hooks are shown in the lower cylinder, and there appears a little below the flange, near the bottom of the upper cylinder and on the right-hand side of the cut two short vertical lines, with cross-lines at the bottom, which, it appears to me, may be meant to represent the common device of a spring hook, the lower end of which, turning inward, would engage with the
164 holes in the inner cylinder when any such holes came opposite. The arc of a circle which I find drawn across the figure at the lower end of what I have regarded as a spring hook I think is intended to mark the division between the upper cylinder and the lower one. Were I permitted by the question to refer to Fig. 11 of the same plate I think I could present such further explanation as would make the fact just stated more apparent.

X 46. Will you explain how you are able to thrust the cylinder having the holes into the other one, which, one inch above the bottom, has three or four protruberances upon which the perforated plate is laid, and also a bottom with a hollow plug about an inch in height?

Ans. In that part of my answer to the ninth direct interrogatory which was made on the morning of January 16 I have remarked upon the peculiar use of the word "bottom" in Exhibit 14*a*, and have observed that it appeared to me to be more than once employed with reference to the end of the cylinder in an inverted position, which is desirable when the drug is introduced that would stand at the top during the subsequent process of percolation. Bearing in mind this peculiar use of the word "bottom" and turning to the remarks on page 2 of Exhibit 14*a*, which are referred to in the question, I understand that the end of the outer cylinder which contains the beak or inlet for the small tube is turned downward preparatory to charging the cylinder with the drug, and upon this end as a bottom, when so placed, small pieces of wood are laid unless there are protuberances one inch above this bottom, and on these pieces of wood or these protuberances the perforated plate is laid preparatory to charging. Then, when the cylinder is charged, the second plate is put on or placed within the cylinder over the drug and the cloth covering it, and the inner cylinder is then placed upon this perforated plate, being thrust into the outer cylinder so far as its contents will permit, and the hooks of the outer cylinder secured to the neighboring holes on the sides of the inner cylinder.
165 Both cylinders, as I understand, are, at the conclusion of the charging process just described, inverted, the percolating tube at the top is attached, and the apparatus is then ready for the process of percolation.

X 47. Please point out the specification of inverting the cylinder after it is charged, commencing from the top of the second page down to the beginning of the description of the Beindorf modification, since you say that you understand that both of these cylinders are inverted.

Ans. As counsel is careful in his question to exclude those portions of the exhibit which refer to this process of inverting, and which afford the best evidence of the fact that the term "bottom" is used in the sense I have stated, I am unable to point out any explicit specification of this process of inverting, but I am obliged to leave the same wholly to inference.

X 48. In your 41st cross you have stated that you considered the adjustability of the lower diaphragm in its relation to the drug in the percolator to be essential to both complainants' and respondent's machines. How, then, do you testify that Respondent's Exhibit 14 contains substantially the device described in complainants' patent, when in Exhibit 14 the lower diaphragm has no capacity for adjustment to the drug at all, is larger in diameter than the lower orifice of the vessel D, and has the vessel D resting upon it, and cannot enter the lower orifice at all.

Ans. The statement in this interrogatory omits one important qualification which is presented in the 41st cross-interrogatory, in respect to the adjustability of the lower diaphragm being an essential feature, since the latter interrogatory mentions it in connection with "the operation contemplated in the use of both devices." In answering this I had in mind simply the ordinary mode of use which is common with both devices. But the Rosenwasser device may be used effectively, and I presume often is used, without especial reference to the adjustability of the lower diaphragm.

166 The cylinder in an inverted position may be filled with the drug to be percolated so as to be packed quite full, the drug having been previously moistened, as I understand is usually done preparatory to putting it into the percolator, so as to cause its expansion by absorption of liquid to near the full limit. Again, the lower plate or diaphragm may be placed upon it and the cylinder with the diaphragm so placed inverted and deposited upon a rack or other suitable means of support, so as to allow the menstruum to percolate through into a receptacle beneath. The Rosenwasser patent makes no mention in its claim of the perforated plate or diaphragm D, and in no part of the specification is there anything said about the adjustability of this diaphragm. The only mention of it in the patent is in these words: "D is a perforated plate. This plate may, if desired, be replaced by any porous diaphragm or interposing substance, such as filter paper, cloth, pumice, or the like. This is to prevent the drug from escaping from the percolator during its use, and it is to be secured in position by suitable means."

As the patent lays no stress upon the adjustability of the diaphragm, and as it may be doubted whether it is a feature embraced in the claim, and it is practicable to secure it in position by suitable means without reference to its adjustability within the body of the cylinder; moreover, as it may be used successfully at the bottom of the cylinder, even when such body is not wholly filled with the drug, the upper part thereof being filled with sticks before introducing the drug (in a manner which it appears was well known in the art long before the application for this patent), I regarded Exhibit 14 as

containing substantially the device described in complainants' patent.

(Objected to; irresponsive.)

— 49. You have stated in cross 41 that the capacity of the lower diaphragm to be adjusted is an essential feature in both patents and to the operation contemplated by both devices. How, then,
167 can Exhibit 14 be substantially the same as the device described in the Rosenwasser patent, inasmuch as Exhibit 14 does not possess this essential feature?

Ans. I can only say, in explanation, that I understood the 41st cross-int. as referring to the adjustability of this diaphragm as an essential feature in both complainants' and respondent's patents with reference to the operation contemplated in the use of both devices. Only one mode of operation presented itself to my mind in this connection as common to both devices and which was likely to be employed in ordinary use, viz., the method of pressing the drug up into the body of the cylinder by means of the lower diaphragm, a method upon which special stress is laid in Berry's patent, but upon which no stress is laid and of which no specific mention is made in Rosenwasser's. In fact, this method only occurred to my mind as a convenient method and as the one most likely to be employed in common use in reading the description of Rosenwasser's device which is contained in his patent. Considering the diaphragm D in Rosenwasser's patent merely with reference to this mode of use, I did regard its adjustability as essential.

X 50. Have you now, since the last three questions, changed your mind upon this subject?

Ans. Only so far as I have already indicated. I should still regard adjustability of the Rosenwasser diaphragm essential with the mode of use which I have last specified and which I had in mind when I answered cross-interrogatory 41, but not essential with the other mode of use which I have specified.

X 51. Looking now to Exhibit 14*a*, at the commencement of the description of the Beindorf modification, p. 4, point out those parts which specify that the cylinder is to be turned bottom up, charged with the drug, a bottom diaphragm placed upon the drug, and the cylinder then reversed before percolation.

Ans. Looking to the description of the Beindorf machine, as requested, I find it mentioned at the outset as a modification or "very practical change in the construction" of the Real press.
168 From what follows I understand that only those portions of the machine are described which are needful in order to make known its character as a modification of the former. This character is well understood by reference to Fig. 11 of the copper plate, referred to in the pencilled part of the translation, which is found in the second line on p. 5 of the exhibit, this pencilled translation properly ending, as I understand, with the term "copper plate," after which quotation marks are placed. The Biendorf cylinder is described as fitted into a chair the cover or seat of which is movable, so that by turning the same the press may be filled. On referring

to Fig. 11 I find the cylinder represented as so placed. The cylinder is shown in two positions, one vertical, the other inclined, the inclined position being indicated chiefly by dotted lines. In the latter position it is represented without the long tube through which the menstruum is introduced and with the funnel-shaped piece, which is to collect and conduct the liquid after percolation into a proper receptacle, detached.

I observe that the cylinder is supported upon the movable chair seat by means of a projecting ring or flange, and that a little below this flange and near the upper edge of the chair there appears to be the end of a trunnion, opposite to which, I presume, there would be a corresponding trunnion, both affording, I should judge, support for the movable chair seat and the cylinder of the percolator which rests thereon. Upon these trunnions, in my opinion, the cylinder and its supports are meant to revolve, so that when the end to which the funnel is commonly secured is turned upward and the funnel detached it is in a convenient position to be charged. In this position the end to which the stop-cock is attached would be at the bottom. The cylinder or press, as it is sometimes termed in the translation, is doubtless to be filled in the manner of filling or charging the Real press, which is previously described, this description being found on page 2—that is, by placing a perforated plate, either 169 upon small pieces of wood laid in the bottom of the cylinder or upon protuberances upon the inner sides of the cylinder, an inch above the bottom, then spreading a woolen rag upon the plate, laying the substance to be exhausted upon this rag, putting a similar rag over the top, and finally placing upon this the second plate, which is to be properly secured in its position. When so changed in an inverted position, the top end of the cylinder being downward, and having served as a bottom upon which to build up the mass to be percolated, I find the course to be subsequently pursued prescribed on the 5th page in connection with a redescription of the manner in which the filled cylinder is to be placed and supported, thus: "The filled cylinder, turned bottom up" [that is, turned with the part which has just served as a bottom in the process of filling upward], "is placed upon a chair having a hole in the middle, in which the cylinder fits and around which it rests, by means of the circular projection above mentioned. A vessel to receive the liquid is placed beneath. The cylinder must be open at the lower end. A funnel may, however, be placed underneath, in order to prevent spattering and introducing impurities into the extract."

Referring to Fig. 11, in connection with this description, it is unmistakable what position the cylinder stands in during the process of percolation, and it seems to me equally unmistakable that the phrase "turned bottom up" in the passage just quoted preceding the words inclosed in brackets means "reversed," so that the part which had just served as a bottom during the process of filling is brought to the top.

(Adjourned to January 19, 1884.)

(It is agreed between counsel, whether noted in the record or not, that the right to objections by either party is reserved until and at the time of hearing.)

170 JANUARY 19, 1884.

(Witness continues his answer:)

This use of the term "bottom" harmonizes with that on p. 2, which I have before commented on and explained. The bottom is there described as "provided with a hole in such a manner as to form a hollow plug about one inch in height." The word "plug," as here used, I understand to be employed in a sense which is not uncommon in mechanics—not as meaning merely a stopper, but a stopper with a hole through it lengthwise, through which water, steam, or other fluids may pass. The term "fire-plug," as used in connection with street hydrants, is a familiar illustration of the use of the word "plug" in this sense.

Referring now to Fig. 11 it will be observed that there is such a plug in the end of the cylinder to which the tube is attached. This plug is especially noticeable in that view of the cylinder which represents it as inclined and without the tube. The opposite end has no such plug, and nothing which any mechanic or person familiar with the use of mechanical terms would be likely to designate as a plug, but is provided simply with a funnel or tunnel, the lower end of which, of course, terminates in an ordinary discharge tube. I again call attention to the fact that on p. 2 of the exhibit the plug is mentioned as connected with the bottom of the cylinder. On p. 8 of the exhibit I find these words: "In order to allow the liquid to run off I have attached to the cylinder, at the side and where the first perforated plate lies, a small hollow slanting tube provided with a stop-cock, or which also may be closed by a cock. In this way the liquid may be drawn off from the tube and cylinder, as convenient or necessary, without taking the apparatus apart." Taking this passage in connection with the reference to the first perforated plate, on p. 2 of the exhibit, it is apparent that
171 such first perforated plate is the one which serves as a basis upon which the drug is placed, that it lies nearest to what is termed, during the process of charging, the bottom of the cylinder, and that it is adjacent to the stop-cock or small hollow slanting tube just described and which is marked *b* in Fig. 11.

The last paragraph of Exhibit 14*a*, referring to the percolator in its upright position in readiness for the percolating process, says: "If, now, the lower part of the tube be bent or if a bent piece of tubing is brought into air-tight connection with the cylinder, if this tubing is fitted to the tube mentioned above and the whole is inverted, working and manipulated as indicated above, the same result is obtained. The second perforated plate may then be kept in position yet easier, and by means of screws, etc., the substance could yet be pressed more strongly if necessary." From this I understand that if the cylinder is inverted from the position which is usual in the process of percolation (and is such as is shown by the representation in Fig. 11 with the tube attached), so that the end con-

taining the plug would be downward, then that with a piece of curved tubing having one extremity fitted to this plug and the opposite extremity to the vertical tube, the process of percolation could be carried on with equal effectiveness and the same result obtained. The use of the word inverted in the sentence just quoted implies that the construction of the chair or stool upon which the cylinder rests and the arrangement of the cylinder in connection therewith is such as permits a complete inversion of the cylinder. When inverted in the manner just mentioned it is evident that the second perforated plate, placed upon the top of the drug during the process of packing, could be kept in place by simpler appliances than would be requisite if the cylinder stood in the reversed position and it were needful to support such plate from beneath. This last paragraph on pp. 8 and 9 of the exhibit shows that the cylinder or percolator is equally capable of being used during the process of percolation with either end of the cylinder upward. Of
172 course, if it were used in the manner last described it would be needful to have the funnel *c* tightly fitted to the cylinder and a bent tube or hose pipe attached to its nozzle to convey the liquid percolate into a proper vessel.

X 52. You state in X 45 that you consider the arc of the circle in Fig. 10 as the dividing line between the two cylinders and the short vertical lines you think representations of the hooks spoken of. Now, looking at p. 3 of Exhibit 14*a*, you will find that the holes are specified to be in the second or lower cylinder. How do you reconcile your answer with the language of the description, since there are shown two holes above the said arc?

Ans. I think the holes referred to in the Fig. and which I observe are somewhat out of line with or not perpendicular to the nearest row of holes in the inner cylinder lying below are probably intended for the reception of a spring catch or fastener shown upon the upper side of the tunnel projecting somewhat beyond its marginal rim, these holes, one or the other, being serviceable when the inner cylinder is thrust far within the outer cylinder, as would be the case when percolating a small body of drug.

X 53. Then you take the liberty of putting the tunnel *c* of Fig. 11, which is considerably larger in diameter than the cylinder *c*, onto the lower end of the cylinder *c*, do you?

Ans. No; I do not take the liberty of putting on a tunnel which would be a misfit, because common sense would teach any mechanic to make use of a tunnel which would properly fit; but a change in size could be made without change in the plan of construction; and it is stated generally in the description on p. 5, after mentioning that "the cylinder must be opened at the lower end," that "a funnel may, however, be placed underneath, in order to prevent spattering and introducing impurities into the extract." No reason is apparent to my mind why a funnel of materially different con-
struction should be used for attachment to the lower end of
173 the cylinder shown in Fig. 10 from what is shown in connection with Fig. 11.

X 54. Will you explain, after you have shoved your supposed

lower cylinder up into your upper one, how you are going to pass your supposed lower tunnel up over your movable hooks, which are specified to be attached to the lower end of the upper cylinder, and to hook into the holes of the lower one?

Ans. From the manner in which the movable hook is represented, near the lower edge of the upper cylinder, at the right-hand side in Fig. 10, I understand it to be a flat spring hook which lies down within the body of the cylinder or very close thereto, except when the hooks are sprung outward, so as to allow the passage between them of those portions of the inner cylinder which are intermediate between the holes. Flat spring hooks of this kind for supporting one body, which is to be passed within another, are an old and familiar device in mechanics. I think I have often seen them in connection with lanterns. It is not needful, however, that the funnel should fit tightly upon the lower end of the cylinder. On the contrary, it may be somewhat loose, it being stated on p. 5 of the exhibit, after mentioning the convenience of a funnel at the lower opening of the cylinder, that "the lower opening must and should not be closed air-tight, as this would interfere with the efficacy of the machine."

X 55. You will observe that I have not asked you about any imaginary spring hooks which you may have seen on lanterns, but concerning the movable hooks specified in the translation; and I now repeat the inquiry, how you would pass the funnel-shaped end over two or more movable hooks attached to the lower end of your supposed upper cylinder?

Ans. I have not testified in regard to any merely imaginary hooks, but only with reference to such as I understand to be represented in Fig. 10 and which are of a kind that have long been familiar to me. The only movable hooks which I find specified in the
174 translation are described simply as "movable hooks." Such hooks as I have testified about fully answer to this description. There would be no difficulty whatever in passing the funnel-shaped end over two or more such hooks, since when their hooked ends, turning inward, engaged with the opposite holes in the lower cylinder the body of the hooks would project but little, if any, beyond the main body of the outer cylinder.

X 56. Suppose the original from which that translation purports to be taken has no reference to Fig. 10 at all, which is the fact, would you, then, feel at liberty to construe movable hooks into spring lantern hooks and such like?

(Objected to as being an assumption contrary to fact, hypothetical, not based on proper premises, irrelevant.)

Ans. I certainly should.

X 57. Then if the specification said "spring hooks" would you not be equally at liberty to construe it into hooks that are "not spring?"

(Objected to; incompetent.)

Ans. No; for while the term "movable hooks" is generic and covers any kind of hooks that would be movable, whether spring

hooks or otherwise, on the contrary the term "spring hooks" is specific and does not cover any kind of movable hooks.

X 58. In your tenth answer you say of Exhibit 15 that it presents, in the main, such features as are correspondent with certain of those described in Exhibit 14*a* and are illustrated by certain parts of the figures referred to. Looking at Fig. 10 and Exhibit 15, do you not find that the flange is on the upper cylinder, according to your theory, in the one case, and on the lower cylinder in the other?

Ans. Yes; I do. I observed, on first making comparison of the body of Exhibit 15, that the flange did not appear to be in the place where it is shown in Fig. 10, and this was one fact which led
175 me to make use of the phrase "in the main" when I spoke of its presenting such features as are correspondent with certain of those described in Exhibit 14*a*.

X 59. Then you probably meant the same thing when you also observed in the same answer (and you probably saw these differences with the same clearness), "I observe nothing in Exhibit 15 which is not substantially described or illustrated in the description mentioned and the figures referred to therein, except merely the soldering of the diaphragms to the parts with which they are connected," did you not?

Ans. I meant precisely what I then stated, for I do not find that the description contained in Exhibit 14*a* limits the use of a supporting flange to precisely what is shown in the cut, Fig. 10, nor do I find that this flange is in any way an essential part of the percolating apparatus. The percolator may be supported by other means and yet perform its office as a percolator equally well. This is only one of the incidental conveniences which may be used or dispensed with as is thought best, and a mere change in the location of which within certain limits would by no means prevent the percolator from performing its proper office.

X 60. Bearing in mind that you have testified that there is nothing in Exhibit 15 except the soldered diaphragms but what is substantially described or illustrated in Exhibit 14*a*; also bearing in mind that you have testified that the supposed tunnel in Fig. 10 can pass up over the lower end of the upper cylinder and catch into the two holes which you say are in the lower end of the upper cylinder, please explain how you would go through with the same performance with Exhibit 15.

Ans. In considering my testimony referred to in the question, and which is found in my answer to direct int. 10, it is to be remembered that the statement was made by me with reference to those features of the devices mentioned which are a subject of controvery in this litigation and which have a direct bearing upon the questions involved therein. I did not especially consider
176 minor details, which are of little importance and which are unrelated to these questions. With this explanation, and with the explanation contained in my previous answer, I reiterate my previous testimony. I do not consider that in the construction of a percolator substantially like that described in Exhibit 14*a*, in those essential features which have direct relation to the perform-

ance of its office as a percolator, the precise location of the supporting ring is material. It is enough if the percolator is substantially the same in its essential features so as to perform substantially the same office. Trifling variations in mere matters of form or of adjunct conveniences are not to be regarded in considering the main question. Of course, I do not mean to state and have never meant to state that a tunnel, such as is represented in Fig. 10 or as is shown in Exhibit 15, could pass up over the lower end of the upper or outer cylinder of Exhibit 15 while a broad flange or ring of metal is interposed between them.

X 61. Still bearing in mind that you have testified that there was nothing in Exhibit 15 which is not substantially described or illustrated in Exhibit 14*a*, please state where you find the two holes in what you call the lower part of the upper cylinder; and, in answering, I am willing, if you are, to let the argument upon the law of form and substance embraced in the preceding answer be considered a part of this without repeating it.

Ans. I do not find any two such holes in the lower part of the upper cylinder of Exhibit 15, and I have not testified that I find nothing described or illustrated in Exhibit 14*a* which is not substantially like what is shown in Exhibit 15.

X 62. Looking now at Fig 10, will you explain how what you call the spring hook can possibly enter the holes of what you call the lower or second cylinder, when it is represented as extending only as far as the lower edge of what you call the upper cylinder and no further?

Ans. A very slight notch or recess in the lower edge of the
177 upper cylinder, just beneath the hooked end of the spring fastener or hook would allow the same to spring inward and engage with the holes coming beneath it.

X 63. Do you find any illustration of such a contrivance in the cut or any allusion to such a thing in the translation?

Ans. Such a notch or recess is not shown in the cut, since it would be hidden from view by the broad surface of the spring-fastener and could not be well shown except by a separate illustration of this detail; but the intelligence of any ordinary mechanic acquainted with the construction of similar vessels would at once enable him to supply this. I find no allusion to this in the translation and should hardly expect to find it.

X 64. As an expert, to define technical phrases and read drawings, you feel at liberty, do you not, to make this hypothesis of yours a part of Fig. 10 where it is not shown and of the description where it is not described?

Ans. No. I do not feel at liberty to make it any part of a cut in which it is not shown nor of a description in which it is not contained; but I should feel at liberty, in constructing a vessel with the guidance of such a cut and such a description, to supply that which the intelligence of the ordinary mechanic would immediately recognize as an obvious requisite. I should feel as much at liberty to supply this as to supply those peculiar requisites which are needful in the joints of the apparatus, but which are not shown nor described, or

to provide the necessary soldering for fastening the parts of the apparatus together.

X 65. Then, if your ordinary mechanic would know enough to put that on without any description, don't you think your ordinary mechanical draftsman would know enough to put it on in making a drawing from the machine?

Ans. He would if he deemed it needful; but if he regarded it as a device which common intelligence would be likely to supply or if he did not deem it an essential part of the mechanism (that is, essential to its main purpose) he might omit it.

178 X 66. Will you explain, in the light of the following passage: "The inner cylinder, after the outer one has received its contents, is placed upon the perforated plate," how your supposed lower cylinder is to be pushed up into your supposed upper cylinder in Fig. 10, being represented as they are, as perfectly coincident and of equal diameter?

Ans. In a former answer to int. — I remarked upon what appeared to me to be a slight inexactness of drawing in Fig. 10, but expressed the belief that I substantially understood the same. The difference to be indicated between the diameter of the inner cylinder and the outer cylinder, at most, would be very trifling or merely the difference on each side of the thickness of a sheet of metal like sheet tin. From the description I understand clearly that there are two cylinders here, viz., an inner cylinder and an outer cylinder; and for various reasons, several of which I have already stated, it appears to me that the transverse curve, which lies about three-sixteenths of an inch below the representation of the flange in the drawing, marks the lower line of the upper cylinder. The representation just above this line and near its right-hand extremity, of which I regard as the spring hook for catching into the holes in the side of the inner cylinder and affording support to the latter, serves to confirm me in this view. So also do the two holes at the left and a little above the line—which I have regarded as holes to receive the catch or hook upon the upper edge of the funnel, give support to the latter—afford further confirmation. Again, it is evident to my mind that if the upper cylinder were to be sustained by means of the projecting flange upon the upper side of a movable or revolving chair seat, it would be found most convenient in providing for the introduction and support of the inner or lower cylinder to allow the body of the upper and outer cylinder to project a little below the bottom of such seat. Such projection would conveniently expose the part containing the spring hooks and the notches for the reception of the tunnel-fasteners, and would also conveniently expose the

179 lower rim of the upper and outer cylinder, so it would afford a ready guidance in inserting the lower or inner cylinder.

I do not suppose for a moment that the inner cylinder could be introduced into the outer if both were of equal diameter, but I think enough appears from the description and drawings to prevent an intelligent mechanic from being misled by this slight inexactness in the drawing, Fig. 10, and to enable him properly to construct the parts.

X 67. You have stated, referring to Fig. 11, that there appears to be a trunnion in the chair, which you consider a support of the movable chair seat and the cylinder; also that upon these trunnions, one of which you suppose to exist, the cylinder and its supports are meant to revolve. Do you mean that the chair seat revolves so as to carry with it and invert the cylinder or vessel that is represented as placed thereon or therein?

Ans. I do, so far as is needful for such inversion.

X 68. Do you mean that the chair seat revolves in a vertical plane so as to bring the vessel on or in it bottom up?

Ans. I do.

X 69. You mean that the entire chair seat makes a complete revolution, do you?

Ans. I have not indicated this in my testimony, and I do not know that it is needful for me to determine that fact, but I do mean that I am satisfied that the construction was intended to be such as will permit a half revolution, so that the ends of the cylinders may be reversed.

X 70. You have stated in answer to a preceding interrogatory that the chair seat revolves in a vertical plane so as to bring the vessel placed in it bottom up. Do you mean by that the usual signification, viz., putting the bottom where the top was, and *vice versa*, or do you only mean bringing the cylinder up to a horizontal?

Ans. I mean revolving through an arc of 180° or so that the part which stood at the top when the body of the percolater
180 was in a vertical position would be brought to the bottom or directly underneath its former place.

X 71. Do you mean that the entire top of this chair or table thus revolves?

Ans. No; only such part of the top between the side pieces of the frame and such contiguous cleats or bars as a mechanic might provide for convenience in securing the cylinder and its supporting seat in a fixed position during the percolating process.

X 72. Do you think that the middle parts of the chair seat revolve, leaving a strip or narrow piece on each side running along on the inside of the top of the side pieces of the frame?

Ans. From what is shown somewhat incompletely in the drawing I infer that such an arrangement was contemplated; but I do not know that it is at all needful to determine this, since any provision such as a competent mechanic would readily supply for allowing the cylinder and its supporting seat to revolve through a half circle and to be secured in a proper position during the percolating process would answer the purpose.

X 73. By these center pieces do you mean the two bifurcated boards or pieces which when placed together surround the cylinder?

Ans. If by such bifurcated board or piece you mean such a one as is represented in the side drawing, *g*, showing one of the details of Fig. 11, I do not. It is quite impossible for me to define from Fig. 11 exactly what parts of the cylinder seat were meant to revolve, for the drawing, in respect to this minor and unimportant detail, is obviously incomplete. Nevertheless, it is no such deficiency as would

render it troublesome for an intelligent mechanic to construct a proper revolving seat with its proper supports and attachments.

X 74. Is it not a fact that the two bifurcated pieces, so far as they are illustrated, have beads fitting into grooves in the
181 contiguous edges of the other parts of the table top so that they could not independently revolve without destroying said beads?

Ans. I perceive only one bifurcated piece represented in the drawing, upon one side of which there is shown a tongue (which I presume you refer to when you use the term "bead") that would fit into a corresponding groove. This bifurcated piece is apparently intended for use on that side of the chair seat to which it is nearest, and I presume is meant to be drawn out when the cylinder is revolved, but the drawing of the top of the chain, and especially of those provisions which are intended to allow of the cylinder and its supports being revolved, is so incomplete that I must decline any attempt to give a precise explanation of that respecting which I should be so far left to conjecture.

(Adjourned to Jan. 21, 1884.)

JANUARY 21, 1884.

X 75. You have intimated that you preferred that I should have interrogated you on the whole of Exhibit 14*a* taken together; but do you not consider that the passages from p. 2 down to the pencilled interlineation on p. 3 is especially applicable to Fig. 10 and what we have called the Beindorf modification especially descriptive of and applicable to Fig. 11?

Ans. I consider the description on p. 2 applicable to a certain extent to what is illustrated in Fig. 10, yet by no means limited to the latter. It describes a cylinder having a bottom provided with a hole in such a manner as to form a horizontal plug about one inch in height, this construction being such as replaces (or, in other words, takes the place of) a cylinder open at both ends, but provided at one end with a cover. I have before explained that I re-
182 gard the word "bottom" in this connection as relating to that which forms the top end of the cylinder during the percolating process, but which lies at the bottom while the cylinder is being charged with the drug to be percolated. Such a solid bottom as takes the place of the removable cover and is provided with a hollow plug is shown at the upper end of the cylinder in Fig. 10, where the apparatus is represented in the proper position for the percolating process.

On the other hand, an apparently removable cover is shown at the upper end of the cylinder, represented in position for the percolating process in Fig. 11; but p. 2 presents a description of a percolating cylinder which is single and is complete in itself without any second cylinder. On the contrary, p. 3 presents a description of a percolating case which is compound or which includes a second cylinder fitting within the one first mentioned. The contrast between this device and the former is marked at the very beginning of p. 3 by the opening sentence, which reads: "Or a second cylin-

der of tin may be made of ordinary tinware (weissblech), fitting exactly into the first-mentioned cylinder, but which can be taken out and inserted again easily." I consider the Beindorf modification as especially descriptive of and applicable to Fig. 11 as respects certain parts of the same, but not as completely illustrated thereby or restricted thereto.

X 76. Turning now to Repondent's Exhibit 13, you will see that it is referred to at the commencement of Exhibit 14*a*, and that it contains the description purported to be translated by Exhibit 14*a*, and that it was published at Stuttgart in 1830. Turning now to Exhibit 12, which contains Figs. 10 and 11, do you not perceive that it was published in Heidelburg in 1843? Do you not therefore see that we have been engaged for five days upon the proposition that a description published in 1830, and making allusions to illustrations not produced, is descriptive of drawings that were not in existence until thirteen years afterwards?

Ans. I perceive that Exhibit 13, which purports to have
183 been published at Stuttgart in 1830, is referred to at the beginning of Exhibit 14*a*, and that the latter exhibit purports to be a translation of what is contained in the former, beginning on p. 157, vol. I. Turning to Exhibit 12, which contains Figs. 10 and 11, I perceive it was published at Heidelberg in 1843; and I also perceive, on referring to p. 157 of this latter exhibit, that it appears to contain the same matter as that found in Exhibit 13—that is, the same from which the translation purports to have been made. I conclude, therefore, that the latter is simply a reproduction of what I find contained in the former. I notice, however, that the pencilled passage on p. 3 of Exhibit 14*a*, ending with the word "plate," and the pencilled passage on p. 5 of this exhibit, ending with the word "plate," appear to be translations of passages interpolated in Exhibit 12, in what I have before mentioned as reproduced from the former work, Exhibit 13. I have marked on pp. 158 and 159 of Exhibit 13 with two parallel lines in each instance the respective places where these interpolated passages appear to have been introduced. These passages evidently are interpolated by the editor of the later edition for the purpose of referring to figures illustrative of the devices which are alike described in the text of both editions.

I speak of the latter book—that is, Exhibit 12—as a later edition of the former, since I find it has a double title page, the first corresponding in good part with that of the Exhibit 13 published in 1830. The first title page denominates the work "Hanbuch der Pharmacie Zum Gebrauche Bei Vorlesungen und Zum Selbstunterrichte Fur Arzte, Apotheker und Droguisten von Philipp Lorenz Geiger." The second title page denominates it "Handbuch der Chemie mit Ruchsicht auf Pharmacie von Dr. Justus Liebig, Professor der an Universitat Zu Giessen." I understand, therefore, Exbit 21 to be a later edition of Geiger's Handbook of Pharmacy, containing, as I judge from a superficial examination, notes and
additions by Liebig as the editor thereof. It seems improb-
184 able to me that the figures 10 and 11 referred to in the later

edition would have been introduced by its distinguished editor, Liebig, as illustrative of what is described in the text of the old edition of 1830 unless they were correct representations of what had been long known to him as devices of which such text was properly descriptive. In view of these facts, I do not see that we have been engaged any number of days upon the proposition that a description published in 1830 is simply descriptive of drawings that were not in existence until thirteen years afterward, but only that it is a description of well-known objects which were subsequently represented by such drawings.

C. C. MORGAN.

Attest: A. H. DAVIS, *Examiner.*

(Respondent offers in evidence and introduces a certified copy of the file wrapper and contents in the matter of the letters patent granted Nathan Rosenwasser April 18, 1882, No. 256,504, for improvements in percolators, including complainants' petition for said letters patent, specifications, claims, and proceedings had thereon in the Patent Office, marked "Respondent's Exhibit No. 17, A. H. D., Ex'r.")

(Objected to as incompetent.)

185 *Evidence for Complainants in Rebuttal, Taken under the 67th Rule of the Supreme Court of the United States, as Amended, Before me, John S. Derby, Special Examiner.*

Present: Counsel of the parties.

Deposition of Herman Paepke.

NEW YORK, *March* 5, 1884.

Direct examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

Int. 1. What is your residence and business?

Ans. New York city; pharmacist.

2. Where is your present place of business?

Ans. 213 Sixth avenue.

3. How long have you occupied this place?

Ans. Three years nearly; at the next door I was twelve years.

4. Where were you in business before you commenced at the last-named place?

Ans. I was in Varick street, corner of Broome—No. 108 Varick.

5. How long were you there in business?

Ans. Since 1860.

186 6. Whom, if any one, did you succeed at that place?

Ans. Adolph Nietsch. I bought it from him.

7. Did your purchase include the stock and furniture of the shop and building connected therewith?

Ans. Yes.

8. Did you make an examination of the stock and furniture before purchasing?

Ans. Yes.

9. Please state if there was in the rear of the shop a small room or building at the time you began there.

Ans. Yes.

10. How large should you judge the room was in the rear of the shop?

Ans. Only small; it was rather more than eight feet; it was longer than it was wide—about twelve feet long and half as wide.

11. Please state what this room contained at the time you took possession.

Ans. Various pharmaceutical preparations and glassware.

12. Were there shelves in the room?

Ans. Yes; the tinctures, &c., were placed on the shelves.

13. How many windows were there?

Ans. Two windows, I think.

14. Was there more than one door?

Ans. As I remember, but one.

15. Was there any table or bench in the room?

Ans. Yes; a table.

16. Was there any closet capable of shutting up?

Ans. No.

17. Was there any shelf with holes in it to hold percolating vessels?

Ans. No; I don't remember anything—that there was any such thing.

18. Was there any means of heating the room?

Ans. Not while I had it.

187 19. Have you seen and do you understand the percolator which is called the Rosenwasser percolator?

Ans. No; I never heard of it before Mr. Spieth showed it to me about two weeks ago.

20. Had you ever seen a percolator made like that before Mr. Spieth showed you that one about two weeks ago?

(Objected to by defendant's counsel as by stipulation.)

Ans. No; I have not.

21. Was there any such a percolator in the back room of the premises you occupied on Varick and Broome streets, either at the time you took them from Nietsch or while you continued there?

Ans. No; I don't remember to have ever seen a percolator on the premises.

22. Was there on the premises or in this back room a tin cylinder with two perforated disks or diaphragms inside the cylinder?

Ans. No; I don't remember of seeing such a thing on the premises.

23. According to your recollection, were there any tin vessels of any kind in this little room when you took it from Nietsch?

Ans. I do not remember of having any such tin vessels there.

24. Please state, in a general way, as nearly as you can, how frequently you were in this little room after you took possession.

Ans. I was there very often—several times a day; I had things there that I had to bring forward—medicinal preparations of various kinds.

25. Did you use this place to make tinctures and extracts in?

Ans. Yes; I sometimes used it for making some things, because there was a good light there.

26. When you bought the stock, was there a written list or inventory of the different articles made out?

188 Ans. There was not.

27. How many times did you look through the stock before you closed the trade?

Ans. I suppose two or three times.

28. Does or not the front shop consist of a small room about eighteen by twelve feet?

(Objected to as before.)

Ans. It seems to be about that.

29. Please state whether the shop proper was what you would call a small, a medium-sized, or a large apothecary's store.

(Objected to as before.)

Ans. Small.

30. In your judgment, could there have been a tin percolator with two perforated diaphragms in it—a pail or reservoir to hold the liquid—in that shop or in that back room without you knowing it when you examined the stock and when you took possession?

(Objected to as before.)

Ans. I think not.

31. Was there any back yard or space in the rear of the premises?

Ans. There was a small yard, and in that yard there was this rear building.

32. Was there any cellar in this rear building?

Ans. No.

33. What was in the cellar under the shop when you took possession?

Ans. Rooms to live in; sometimes I let it.

34. How long were you in the Varick and Broome street store?

Ans. About nine years.

35. To whom did you sell when you left the Varick and Broome street shop?

Ans. To Mr. Cottle.

189 36. To whom did Dr. Cottle sell out?

Ans. To Mr. Daenhoff.

37. When you sold to Dr. Cottle did you not deliver the same articles and vessels, glass, bottles, &c., which you took from Nietsch?

Ans. In the course of years, of course, it had changed. With that exception I sold the store in the same way that I bought it.

Cross-examination by WILBUR F. LUNT, Esq., counsel for respondent:

X 38. How long have you been in the drug business and when did you learn the business?

Ans. Been in the drug business since I was fifteen, and am now sixty—forty-five years—and I learned in Rostock, in Mechlenburg, Schwerin, Germany.

X 39. Have you ever seen the percolating device known as the Realsche Presse?

(Objected to.)

Ans. Yes; I have seen it.

X 40. Will you describe it?

(Objection continued.)

Ans. There is a cylinder on which a column of water is pressing, and at the bottom of the cylinder a hole through which the water can pass off.

X 41. Is this cylinder charged with the substance to be percolated; and, if so, how? Please describe minutely the method of using this device.

(Objection continued.)

Ans. The drug is put into the cylinder and then the column of water is pressing on the drug, extracting it at the same time.

X 42. What, if anything, prevents the drug from running through the lower orifice?

190 (Objection continued.)

Ans. Generally a little sieve put there, same as in other percolators.

X 43. Is this sieve a perforated metal plate?

(Objection continued.)

Ans. Yes; generally it is.

X 44. Is there another one at the top to prevent the swelling drug from expanding into the orifice through which the liquid is admitted into the cylinder?

(Objection continued.)

Ans. That arrangement I never have seen.

X 45. How was the sieve at the bottom kept in place?

(Objection continued.)

Ans. The sieve just rests on the bottom of the percolator or cylinder.

X 46. At which end of this cylinder was the drug introduced?

(Objection continued.)

Ans. At the upper end; at the bottom it run out into a point.

X 47. How was the liquid prevented from flowing over the top of this cylinder?

(Objection continued.)

Ans. There was a cover to the cylinder, and in the cover a hole where the column of water was passing in.

X 48. Was the exterior or outside arrangement of the cylinder in form like the Rosenwasser percolator which Mr. Spieth showed you?

(Objection continued.)

Ans. Those which I have seen were not exactly like it, because they were more pointed and also somewhat different in shape.

X 49. Was or not the only difference that the ends of the cylinder of the Realsche Presse were a little more conical or funnel-shaped?

191 (Objection continued.)

Ans. Yes.

X 50. Will you describe the apparatus by which the liquid was introduced into the cylinder and the different material of which it was constructed?

(Objection continued.)

Ans. It was a long tube of tin, ending in a funnel, into which the water was poured.

X 51. Did you ever see any flexible tube used?

(Objection continued.)

Ans. No.

X 52. Have you read "Geiger's Pharmacie," including the edition edited by Liebig?

(Objection continued.)

Ans. No.

X 53. Have you ever seen it?

(Objection continued.)

Ans. No.

(Objection continued.)

X 54. Did Mr. Spieth leave one of the Rosenwasser percolators with you?

(Objection continued.)

Ans. No, sir; but I got one since from the agent.

X 55. Please state how you use and operate the Rosenwasser percolator.

(Objection continued.)

Ans. I haven't used it yet; I only got it yesterday.

X 56. Please describe the Rosenwasser percolator as known to you; and do you hold in your hand the device known to you as the Rosenwasser percolator?

(Objection continued.)

Ans. Yes; I hold what is known to me as the Rosenwasser
192 percolator. It is a tin cylinder with a cover, two holes, one at the top and one at the bottom, and a tank of tin with a hole at the top and bottom, and a handle to hang it on. They are to be connected by a flexible tube. Inside there are a cross-bar, a perforated plate, two perforated tin plates, a rod, two wooden spring clasps to interrupt the flow of the liquid. I apply them on the flexible tube. The cross-bar is to go into two bosses, a rod passing through it, fastened by a set screw.

X 56½. Please state where you insert the drug to be extracted.

(Objection continued.)

Ans. The drug is to be inserted at the end where the cover is, and then it is tipped over.

X 57. What is the necessity of tipping it over?

(Objection continued.)

Ans. There is a vacant space formed under the perforated plate inside, through which the extracted liquid is to pass, and there was no such vacant place in the Realsche Presse.

(Adjourned to March 6, at 10 a. m.)

X 58. There was a vacant space between the perforated plate formed by the conical end of the cylinder in the Realsche Presse, was there not?

(Objection continued.)

Ans. No; there was not. That's just the difference. By this arrangement of having a vacant place between the drug is pressed together, so that it cannot expand. That is a very important arrangement—this having it pressed together.

X 59. When did you last see a Realsche Presse?

(Objection continued.)

193 Ans. About forty-two years ago.

X 60. Since that time have you read descriptions of it?

(Objection continued.)

Ans. No.

X 61. Did Mr. Spieth represent himself to you as the husband of Jennie A. Spieth or as a partner of Rosenwasser?

(Objection continued.)

Ans. He said he was interested in the concern of Rosenwasser's percolator, but didn't speak of Jennie.

X 62. How much did you pay for the Rosenwasser percolating device which you have?

(Objection continued.)

Ans. He didn't charge me for that, because he sent it as complimentary to recommend it here in this matter.

X 63. Do you on oath say that you profess to have a distinct recollection of the articles of merchandise, fixtures, and furniture that you purchased of Mr. Neitsch twenty-four years ago?

Ans. No; I don't want to say that I have a very distinct recollection.

X 64. Will you on your oath say that Mr. Neitsch did not leave upon the premises which he turned over to you any part of a tin percolator?

Ans. No; I don't want to say it under oath, because I may have forgotten it. I don't remember it; that is all I can say.

X 65. Have you since 1860 purchased most of your tinctures and extracts?

Ans. A great many I have made myself. Of the tinctures I haven't bought much, because I have made the greater part; of the extracts I have bought the greater part.

X 66. Have you used in your business the common Boullay percolator?

Ans. The Boullay term I do not know; but I have used the common tin percolators.

194 X 67. Is the percolator which you have used the same as that described in the U. S. Dispensatory—nearly cylindrical, with a funnel-shaped termination at one end?

Ans. Yes.

X 68. Until recently has your attention been called to the existence of a Realsche Presse or Beindorf's modification of the Realsche Presse for more than twenty years?

(Objected to.)

Ans. My attention has not been called to it, and I haven't heard anything of it.

Redirect:

69. Did you practice percolating in the shop or the rear building where you succeeded Neitsch and while you were there?

(Objected to.)

Ans. No; I never did; I never percolated there.

70. Was there any glass vessel to be used for that purpose among the articles you found in the store when you went there?

(Objected to.)

Ans. I don't remember that there was anything like it.

71. If there had been do you or not think you would now remember such glass vessel?

(Objected to.)

Ans. I think I should.

72. Have you any doubt in your mind that there was not any glass percolator there at that time?

(Objected to.)

Ans. I doubt that there was one there. I think there was not one there.

73. Have you in your own mind any doubt on the subject as to the glass percolator?

(Objected to.)

Ans. No; I have not in my mind, I am sure.

195 74. Are you not also, in your own mind, equally sure that there was no tin percolator?

(Objected to.)

Ans. Yes; I am in my mind equally sure.

Recross by W. F. LUNT, Esq.:

X 75. Is it not a fact that so many years have elapsed since you bought of Neitsch that you are unable to testify under oath with certainty as to any articles turned over to you by him?

Ans. It is a fact that I cannot testify this under oath. I only remember what I have stated in my mind.

X 76. Do you give impressions only, or actual, clear remembrance?

Ans. I give actual, clear remembrance.

X 77. As to what points do you under oath say that you have actual, clear remembrance?

Ans. I don't know how to answer this question, as to what points.

HERMAN PAEPKE.

MARCH 7, 1884.

Present: Counsel of the parties.

Deposition of Herman Sellheim.

Direct examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

Int. 1. Your age, residence, and occupation.

Ans. Age, 47; residence, 180 Broome street, New York city; occupation, druggist.

196 2. How long have you been engaged in the business of a druggist?

Ans. Since my fifteenth year.

3. Were you ever employed in connection with the druggists' business in a store on the corner of Varick and Broome streets, New

York? And, if you were, state, as nearly as you can, when, how long, and by whom.

Ans. I was, in the year 1859—I guess October, November, December, January, February, and March—about six months, by Mr. Neitsch, Adolph Neitsch.

4. What were your duties in the shop?

Ans. Putting up prescriptions and selling over the counter.

5. Do you remember that there was in the yard or space back of the shop proper a building or room?

Ans. Yes; I do.

6. Please describe that room as to its size, its furniture, and any articles or things that were in it.

Ans. My best recollection is that there might have been some bottles for making tinctures in it, and there might be a table or two; it was a small room. Sometimes we had a barrel of alcohol in it to make fluid—burning fluid.

7. How was the burning fluid manufactured?

Ans. By mixing one part of camphene with three parts of alcohol.

8. Give, if you please, what your idea is of the dimensions of the room without pretending to be exact.

Ans. Perhaps four by six or eight feet or ten feet.

9. How many windows, according to your recollection?

Ans. That is out of my memory.

10. More than one door?

Ans. I suppose one door.

11. What should you think was the size of the apothecary shop, and how were the shelves and counter arranged?

Ans. I think twelve by fifteen or eighteen feet; shelves
197 on the right and left sides and a counter on the right side, along Broome street.

12. What was on the shelves of the shop? Describe in a general way.

Ans. Bottles with labels on and jars with labels.

13. Was there or not in this shop the ordinary outfit of a German apothecary shop?

(Objected to.)

Ans. It was a regular German apothecary shop.

14. According to your recollection, was there any percolating done during the six months you were there, either in the shop or in the little rear building?

Ans. I can't recollect of any such percolation.

15. According to your recollection, was there any apparatus for percolation, either in the shop or the little room in the rear?

Ans. No.

16. Please state in the way of estimate how frequently you were in the little house or room in the rear of the shop each day or each week, as you prefer.

Ans. Sometimes have been in that room only once a day and sometimes five times or more.

17. Have you any recollection of a tin vessel in cylinder form, with one or more perforated diaphragms in it, used for percolating drugs in the little rear room?

Ans. No.

18. Are you or not satisfied in your own mind that there was no such vessel there?

(Objected to.)

Ans. I think there was not such a vessel there.

19. If there had been a vessel cylinder in form, made of tin, with one or more perforated diaphragms in it to hold the drug, and a vessel elevated above the cylinder to hold the water, and a tube extending from the water vessel down to the top of the cylin-
198 drical vessel, and if that arrangement had been employed for the percolation of drugs, don't you think you would have remembered it?

(Objected to.)

Ans. I think I ought to have it in my memory.

20. Did a Mr. Speith recently call upon you and show you a cylindrical percolator with one or more perforated diaphragms in it, and a hole in the top for the admission of the liquid into the percolator?

Ans. Yes; he did.

21. Before that time had you ever seen a cylindrical percolator with one or more perforated diaphragms in it, to be used in the way that one was intended to be used?

(Objected to.)

Ans. No.

22. Have you one of these percolators in your shop?

Ans. No.

23. I believe you are interested in two apothecary stores in this city, are you not—one on Rivington street and the other on the corner of Clinton and Broome streets?

Ans. Yes; I am.

24. If you were asked to make oath absolutely that there was no such a percolator, such as we have spoken of, in Neitsch's shop when you were there, I suppose you would decline to take such an oath, would you not?

(Objected to.)

Ans. I would decline.

25. At the same time have you any doubt in your own mind that if there had been such an apparatus you, as an apothecary and interested in these matters, would have remembered it?

Ans. No doubt.

199 Cross-examination by WILBUR F. LUNT, Esq., counsel for respondent:

X 26. Is it not true that so many years have elapsed since you were employed by Mr. Neitsch that your recollection as to the contents and arrangement of his store has become very hazy, uncertain, and indistinct, so that you cannot undertake to make oath to the existence or non-existence of any specific article in his shop at the time you were there?

Ans. It is too long ago to take oath—to swear—to be quite certain of everything. I wouldn't swear on every particular thing I have seen.

X 27. Will you swear that there was no percolating device on Mr. Neitsch's premises then known as Beindorf's modification of the Realsche Presse?

Ans. No, I will not swear.

X 28. Who first called your attention to this subject and when?

Ans. Mr. Speith, about three weeks ago; have seen him once in my store.

X 29. What did he say to you? State all he said.

Ans. He asked me if I was in the employment at that time of Mr. Neitsch, and if I had seen and used such a percolator in his store; that's about all.

X 30. Did he at that time show you a percolating device consisting of a cylinder, closed at one end, with a cover fitting closely over the other end, with like orifices at each end?

Ans. Yes, he did.

X 31. Did that cylinder contain several perforated plates with a rod, cross-bar, and set screw, for the purpose of compressing and holding the drug to be percolated?

Ans. Yes.

X 32. Did Mr. Speith say he would send you one to try?

Ans. Yes. He said if I would like to have one I might send down to Morris & Co. and get one.

200 X 33. Did you understand that it was to be given to you out of compliment?

Ans. Out of compliment—yes.

HERMANN SELLHEIM.

MARCH 7—2 p. m.

Present: Counsel for parties.

Deposition of Charles Froebel.

Direct examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

Int. 1. What is your age, residence, and occupation?

Ans. Age is 45; residence, 243 E. 19th street, New York city; occupation, that of a chemist and a teacher.

2. Are you not a German and is not German your mother tongue?

Ans. I am not a German, but German is my mother tongue. I am a native of the German part of Switzerland.

3. Have you or not had practice in rendering your native language into English? And, if so, please state generally to what extent.

Ans. I have rendered my native language into English in the form of short articles translated from the German into English for publication.

4. Please state what your knowledge of and your acquaintance with the English is, and how long you have been able to speak and write it.

Ans. I have spoken English and written it since 1850, and since a few years after that, fluently.

201 5. Have you recently made a translation from Philipp Lorenz Geiger's "Handbuch der Pharmacie," third edition, entitled "Handbuch der Pharmacie zum Gebrauche bei Volesungen und zum Selbstunterrichte für ärzte, Apotheker und Droguisten von Philip Lorenz Geiger, * * * Erster Band, welcher die practische Pharmacie und desen Hülfswisenchaften enthält Dritte. vermehrte und verbesserte Auflage. Mit einer Kuplertafel Heidelberg, 1830, bei C. F. Winter, Universitäts, Buchhändler, Wien, bei C. Gerold," and is the same literal and correct, according to your best knowledge?

Ans. It is correct, but it is not exactly literal; if it were literal it would not be correct.

6. Is or not the translation which you made a correct rendering into English of the extract from the book referred to?

Ans. It is a correct rendering.

7. Look at the paper now shown you and state if that is the translation referred to in the two foregoing questions.

Ans. It is.

(The paper is introduced in evidence and marked "Complainants' Exhibit 'Froebel,' March 7, '84, J. S. D., special examiner.")

(Objected to under stipulation.)

8. Is there any drawing to which reference is made in this, except in this book?

Ans. No.

(Objected to.)

Cross-examined by Mr. LUNT:

X 9. Have you ever seen and examined an edition of Geiger's Pharmacie, edited by Justus Von Liebig.

Ans. No.

X 10. Have you ever seen any other edition of Geiger's Pharmacie except this one?

202 Ans. Not that I can recall.

X 11. In the book from which you made this translation are there not references to copper plate, under the description of the Realsche Presse?

Ans. Yes, sir.

X 12. Have you ever seen any cuts of the Realsche Presse or drawing thereof?

Ans. I cannot say; I don't remember; not that I can recall at this time.

CHARLES FROEBEL.

EXHIBIT FROEBEL. March 7, '84. J. S. D., Special Examiner.

Extract (Translation) from Philip Lorenz Geiger's "Handbuch der Pharmacie," Third Edition.

Published at Heidelberg, 1830, under copyrights granted at Karlsruhe, Grand Duchy of Baden, May 7, 1830, and Stuttgart, Kingdom of Würtemberg, January 16, 1830.

Extract (Translation) from Geiger's Pharmacie, Third Edition, Vol. I, pp. 141–144.

Real's press consists mainly of a hollow cylinder in which the substance to be extracted, finely pulverized and packed firmly between two sieve-like perforated plates, is so secured that it cannot escape laterally. If the cylinder is open at both ends, one of these is furnished with an air-tight-fitting cover having a central opening, to which a high tube is likewise hermetically fitted. Between
203 the cover and the upper sieve-like plate a vacant space must be left. In extracting, the cylinder is placed vertically, so as to allow a receiving vessel being placed underneath. Through the tube, which may be as narrow as desired (but not of capillary dimensions), menstruum is poured upon the substance, keeping the tube constantly filled. The solvent penetrates the substance and appears below saturated with the extractible portions. From the hydrostatic laws quoted on p. 26 it is evident that the pressure of any liquid column upon its base is proportional to its height, whatever its diameter above that base may be.

For pharmaceutical operations Real's press has been variously modified; the descriptions of these modifications are scattered through pharmaceutical and chemical periodicals. My own simplification, published in the little work mentioned on p. 113, consists essentially in replacing the tin cylinder, open at both ends and furnished with a cover, by a cylinder having a bottom with a central hole, this hole forming a hollow projection one inch in height. Upon the bottom small pieces of wood are laid, or the cylinder is furnished with three or four knobs, or with a ring projecting at a height of one inch above the bottom, upon which the sieve-like perforated plate is placed. Upon this plate a woolen rag is laid; upon this the substance to be extracted is spread equally, pressing it down where necessary; upon the substance are laid another rag and the other plate. To secure this in position wooden braces of various lengths are either wedged against knobs projecting at the end of the cylinder or stuck under wooden cross-pieces passing through holes in an external welt or shelf on the lower part of the cylinder;

or a second cylinder of sheet tin, open at both ends, is fitted exactly in the first one so as to admit of being easily slid in or out. This second cylinder is furnished for its entire length with oppositely placed horizontal notches one-half inch apart, which, to secure the durability of the cylinder, may be situated alternately on different sides. At its open end the outer cylinder is furnished with
204 movable hooks. When the outer cylinder has been charged the inner cylinder is placed upon the perforated plate and secured in position by pressing the hooks into the corresponding notches. This contrivance is especially convenient for smaller and equally applicable to larger apparatus. For the latter, however, an iron ring fitting into the cylinder may also be used. Into this ring two or three strong iron rods are screwed vertically at equal intervals. At a length of about seven-eights of the height of the cylinder they are bent over towards the outside, so that the outer ends are exactly parallel with the inner ends. The outer ends must be at least as long as the cylinder, and pass through holes in the welt. Above this welt a likewise perforated metal ring is placed. The rods pass through these holes in the ring, which are furnished with small screws for securing the rods. (The screws may, of course, be fitted to the welt, but in that case the latter must not be made of tin, but of iron or brass and immovably attached to the cylinder, which is not necessary in the above-mentioned contrivance. The ring may be light and movable.) All parts of this contrivance must be thickly coated (plated) with tin. The application is very simple. The rods are passed though the holes in the welt and outer ring until the inner ring bears firmly against the diaphragm, and secured in this position by the aid of the above-mentioned screws. A very convenient modification of Real's press has been constructed by Beindorf. The cylinder is fitted into a chair having a movable and reversible cover so as to admit the filling of the press and its connection with the tube. The vacant portion of the cylinder is filled with tin rings, and the apparatus closed with a funnel secured by hooks to a projecting welt. (See "Magazin für die Pharmacie," vol. 9, p. 185, where the apparatus is figured; also the copper plate.)

A similar apparatus may be constructed of sheet tin of good quality, or of wood or stone-ware. The contrivances for securing the substances in position are modified to correspond with the material of the cylinder.

205 The charged cylinder is placed, bottom side up, upon a chair having a hole in the centre, in which the cylinder is secured, resting upon the welt. A receiving vessel is placed underneath. The cylinder must be open below. A funnel may be put underneath to prevent spurting and contamination of the extract, but the lower opening must not be closed hermetically, as this would obstruct the working of the apparatus. (A more detailed description of the arrangement on the chair, with movable cover in which the cylinder is fixed, see at the close, under the explanation of the plates.) The upper vacant space is filled with menstruum. The opening in the bottom is fitted with a tube, which may be of sheet tin, glass, wood, or leather. For pharmaceutical use a sheet-tin pipe is the

most convenient; it need not be wider than the little finger; its height should be eight to twelve feet; at the upper end it widens like a funnel for about one foot in height, so that the extreme end may have a diameter of one and a half inches in the clear. It is usually believed that the column should be much higher—thirty to sixty feet—by which its application is much restricted; but, according to my experience, the above indicated height of eight to twelve feet is all-sufficient for pharmaceutical operations. With this twenty pounds of vegetable materials can be rapidly and completely extracted. The pressure exerted by the column of liquid should not be greater than necessary to cause it to slowly penetrate the—according to its nature—more or less firmly-compressed substance and bring it in contact with all soluble parts. The vegetable fibre is thus gradually completely exhausted by the continuous accession of new solvent, which replace and drive below the more saturated portions. In this way a column eight feet in height is equally effective as one of sixty feet, though the latter penetrates more rapidly. The too-violent pressure of a liquid column of such height might, by the bursting of even very strong apparatus, endanger the workman. A perforated cork is fitted into the opening in the bottom, and through this the tube is introduced.

206 The cork must be softened by immersion in hot water previous to its insertion. A good stopper will close the opening hermetically and prevent the escape of any liquid without luting. A vessel containing the menstruum is placed alongside of the upper end of the tube, so that the level of the liquid is somewhat lower than this end. A siphon is now introduced into the liquid and tube, and, excluding the accession of air from without by the lips, thumb, and index finger, some air aspirated through the tube. The liquid will rise and flow through the siphon, filling the tube, and, exerting its pressure and solvent action, penetrates the substance and appears below loaded with extractive matter, clear, and frequently at first of syrupy consistence. The penetration by the solvent is continued until the prescribed quantity has passed, or until taste, smell, and color of the fluid passing show that the extraction is complete. It is only necessary to insure the continuous submersion of the siphon by refilling the reservoir from time to time, keeping the level of the liquid contained always therein a little lower than that in the tube, as the latter would otherwise overflow. In order to be able to check action at pleasure a stop-cock is inserted in the tube, or its upper end may be closed after removal of the siphon. For the withdrawal of the liquid I have inserted a small hollow knob or spout, pointing downward and closed with a stop-cock or stopper in the upper side of the cylinder, at the level of the first diaphragm. (See the illustration.) By these means all liquid may be drawn off whenever desired from tube and cylinder, and the substance subjected to treatment with different menstrua without taking the apparatus apart.

If the lower part of the tube is bent over or a curved piece of tube hermetically fitted to the cylinder is connected with the tube and the cylinder inverted with the open end up, on proceeding as above directed, the same result is obtained. The second diaphragm is

then still more easily secured in position, and the substance
207 may, by means of screws, be subjected to increased pressure, should this prove necessary during the process of extraction. The extract could be drawn off through closable openings in the cylinder or by means of a siphon. The filtering machines of Wurzer and Romershausen mentioned on p. 116 are applications of such contrivances to the process of filtration. (The elevated column of liquid is not even always necessary for extraction. So Hänle extracted with the aid of two telescoping cylinders, the inner construction of which resembled the Real press, described on p. 142. The inner cylinder is above and fixed. The menstruum, poured directly into this, penetrates the moistened substance which has been packed between the two cylinders and appears below, holding the extractive portions in solution. (See "Magaz. für d. Pharm.," vol. 17, p. 57.) Our coffee machines are similar pieces of apparatus; but in these extraction proceeds, for the quantity of substance, but slowly, and admitting only of application on the small scale.)

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Charles Froebel, being duly sworn, deposes and says that the above is a correct translation from the German of an extract from pp. 141–144, vol. I, of Geiger's Handbuch der Pharmacie, edition of 1830.

CHARLES FROEBEL.

Sworn and subscribed to before me this 16th February, A. D. 1884.

[L. S.] E. D. GRANT,
Notary Public (112), *New York Co.*

208 PORTLAND, *May* 7, 1884.

Deposition of Nathan Rosenwasser.

Direct examination by WM. HENRY CLIFFORD, Esq., counsel for complainants:

Int. 1. Are you the complainant in this case and the same Nathan Rosenwasser that has already given a deposition in this cause?

Ans. I am.

2. State where you were born, what knowledge you have of the German language in reading, writing, and speaking the same, and how long you have been acquainted with it.

Ans. I was born in Austria, and German was my mother tongue, which has always been used in my family circle and in my business relations and which I have studied at school and learned to read and write fluently, and I have been acquainted with it from infancy.

3. Have you read carefully the passages from the "Handbuch

der Pharmacie," by Dr. Philipp Geiger, vol. 1, published in 1830 and printed by E. F. Wolters, in Stuttgart, Germany, of which an alleged translation has been introduced in this case, marked Respondent's Exhibit 14*a*, J. S. D., Ex.?

Ans. I have.

(MEM.—The interrogatories and answers relative to the book, extract therefrom, and translation thereof in this deposition to be given are put in *de bene esse*, not waiving any objection to the admissibility or competency of the extract, translation, or evidence connected therewith put in by the respondent.)

4. Look on the third page of the alleged translation of the passage referred to, between the tenth and eleventh lines, and observe
209 an interlineation in pencil, and state if in the original now shown you there is any reference of the nature interlined in the translation or any reference in the book itself to any such figure or drawing.

Ans. No, sir. No such passage or reference appears.

5. On what page to the book and at the end of what line would the reference to Fig. 10 be if it were referred to in this book?

Ans. On p. 158 and at the end of the 27th line, at the point already indicated by two horizontal lead-pencil lines.

6. Now, look on the 2d line, p. 5 of the alleged translation, and look also at the German book now in your hands and state if there is any authority in the original German for the words "also Fig. 11 of copper plate."

Ans. No such words are in the original book, either within the parentheses referring to the magazine or following after, as it is plain to one even uneducated in the language that a new sentence begins immediately after the parentheses.

7. On what page and at what line would this reference to Fig. 11 of copper plate be if it were in the German text?

Ans. It would have to follow the 12th line and be between it and the 13th line, p. 159.

8. You will observe that both of these pencil interlineations contain the words "in Liebig's edition." State if there is any authority in the text of this extract for any such allusion to any such edition.

Ans. There is none whatever.

9. Have you read this Exhibit 14*a* and compared it with the German text of that part of the volume of which it purports to be a translation?

Ans. I have.

10. Look at l. 5, p. 2 of the exhibit, where appear the words "my improvement as described on p. 124," and state if that is a correct translation of the German; and, if not, what is?

Ans. This quotation, taken from the book on p. 157, begin-
210 ning at the 4th line from the bottom of the page, is decidedly wrong, and should read: "My pamphlet mentioned on p. 124 makes known a simplification," &c.

11. Now, referring to p. 124 of the book, is there any description

of any improvement there at all as stated in the translation or of a simplification of any apparatus?

(Respondent's counsel objects that the interrogatory does not refer to the page in the pamphlet to which the witness has deposed, but that the witness turns to a page in Geiger's Pharmacy, edition of 1830, Respondent's Exhibit 13, J. S. D., Ex., which is not the work referred to in the translation or by the witness in his answer to the last interrogatory; also objected to as irrelevant.)

Ans. No such description appears, but reference is here made to Geiger's pamphlet description, Heidelberg, 1816, p. 22.

(Objected to, as the answer does not appear to be any translation of Geiger's Pharmacy, p. 124, but is merely the opinion of the witness.)

12. State on what line you find this reference to the pamphlet and whether there is anything there except such reference merely.

Ans. Beginning at the 14th line, p. 124 of Respondent's Exhibit 13, the two lines following are a reference only to the pamphlet and the date and place of its publication.

(Objected to, and counsel for respondent moves that this answer be stricken out, as it does not purport to be a translation of the page of the book referred to.)

13. Now, looking on the 2d page, 10th line, of 14*a*, state what, if anything, is omitted at that point in the translation which is to be found in the German original, Exhibit 13.

Ans. After the words "one inch from the bottom, with three or four protuberances," I find omitted the words which I now translate as "or a projecting ring provided," and these words are found to be on l. 5, p. 158 of Respondent's Exhibit 13, the last two words of the line and the following three of the next.

211 14. Referring to p. 2 of Exhibit 14*a*, ll. 17 to 19, state what error you find at that point.

(Objected to; incompetent; witness may state what the translation is made by him.)

Ans. My translation from Respondent's Exhibit 13, p. 158, beginning with the second word of l. 11, is as follows: "To secure these in place braces of different length may be used, which are placed under the projections at the end of the cylinder, or are placed under cross-pieces that pass through holes which are made in a welt on the under side and externally of the cylinder;" whereas I find in Respondent's Exhibit 14*a*, page 2, beginning at the fifth line from the bottom and ending at the foot of the page, no mention made of the cross-bars passing through any holes, as is the case according to the correct translation.

15. Look at the top of p. 3, Exhibit 14*a*. State what error you there find, and translate correctly the German of Exhibit 13 at that passage.

(Same objection.)

Ans. My translation of l. 16, p. 158, is as follows: "Or one can have made a second cylinder, open at both ends, of sheet tin," &c.; whereas I find on p. 3, Exhibit 14*a*, first line, the omission of the words "open at both ends," which describes the construction of the cylinder.

16. Looking on p. 3, Exhibit 14*a*, ll. 5 to 6, state what error there is in translation, and give the correct rendering of the corresponding passage in the German text.

(Same objection.)

Ans. I will begin with l. 4. The corresponding German I translate from l. 19, p. 158, Exhibit 13: "This has throughout its length, in distances from one-half to two inches, opposite horizontal notches, which, for the better durability of the cylinder, may be arranged alternately on various sides." The Exhibit 14*a* omits to state the correct translation in so far as to omit "may be arranged alternately on various sides."

212 17. On l. 7, p. 5, Exhibit 14*a*, please point out what, if any, error, and translate correctly the corresponding German passage.

(Same objection.)

Ans. This line reads, on page 5: "The filled cylinder, turned bottom up, is placed upon a chair," &c.; whereas it should be, and I translate the same, as follows, at p. 159, l. 17, of Exhibit 13: "The cylinder, filled with its bottom prepared as above, is placed upon a chair," &c. The meaning, therefore, is entirely different.

18. Referring to p. 7 of Exhibit 14*a*, l. 7, point out the error, if any, and give correctly the translation of the corresponding German passage from Exhibit 13.

(Same objection.)

Ans. The sentence beginning "A syphon is now introduced into the liquid and in the tube," &c., to the end of the sentence should be translated as I now translate it from the corresponding German, p. 160, ll. 10 to 17, Exhibit 13: "One sinks now a siphon into the liquid and into the tube and draws air through the tube by the mouth, while the lips, thumb, and forefinger hinder its influx from the outside. The liquid will then flow up through the siphon, the tube be filled therewith, and so the liquid acts, pressing and dissolving upon the substance," and the error consists in the omission of the words "mouth, lips, and forefinger" and their connection in the sentence.

(Adjourned to Thursday, May 8, 1884, 9.30 a. m.)

MAY 8, 1884—9.30. a. m.

19. Look on p. 7 of Exhibit 14*a* and state if the sentence "The liquid is allowed to act," &c., is a correct rendition of the German, and, if not, translate it correctly; also state if there is any other error in the 14th line.

213 (Same objection.)

Ans. The 14th line, according to the correct translation of the original German, at p. 160, 19th line, has an omission of the following words: "very clear," that should end the sentence ending on the 14th line of the alleged translation, now ending with the words "a syrupy consistence," following those words. As to the sentence beginning "A liquid is allowed to act in this way," &c., I find the 19th line of p. 160 of the original German, and also the 20th, correctly translated, should be as follows: "The liquid should be allowed to press through until the prescribed quantity is passed, or until one recognizes by the taste, smell, and color of the percolate that all has been extracted." It will be seen that the words "soluble substances" of the alleged translation are not found in the original.

20. Look at the 8th page, at the sentence beginning "If, now, the lower part of the tube be bent." State if that is a correct rendition of the German; and, if not, translate the same correctly.

(Same objection.)

Ans. It is not a correct translation of the German. The correct translation, taken from p. 160 of Exhibit 13, at l. 10 from the bottom of the page, should read: "If the lower part of the tube is bent over, or a bent piece of tubing be connected with the cylinder, airtight, fitting it to the tube and bends it over with its open end up, and proceeds otherwise as just mentioned, one obtains the same result." The word "now," in the alleged translation, following "If," does not appear when correctly translated; and the word "whole" does not appear in the 2d line from the bottom of the alleged translation, this alleged translation being very loosely and incorrectly put together. On the 5th line from the bottom of p. 8 of the alleged translation the word "over" is left out after the word "bent" and preceding the comma, making quite a different construction to the phrase.

(MEM.—The following questions concerning Figs. 10 and
214 11 of the drawings, Respondent's Exhibit 12, are put, with the same legal reservation as hereinbefore noted concerning questions upon Exhibit 14*a*.)

21. Have you examined Figs. 10 and 11 of the drawings of Exhibit 12—the latter part of the book?

Ans. I have.

(Counsel for respondent objects to complainants' counsel conversing with witness during the taking of his testimony.)

(Counsel for complainants states that there was no conversation between himself and the witness on the subject of the examination.)

22. Do you understand in Fig. 11 that there is shown a percolator having an enlarged filling and discharge aperture, the vessel to be charged while inverted and then turned to its natural position again for the purpose of percolating the drug thus placed within it?

(Objected to; leading; also witness not shown to be qualified to make answer.)

Ans. I see no such vessel.

23. As indicated in this drawing, state whether you understand the tapering top and bottom pieces to be fixed or removable.

(Same objection.)

Ans. They appear to be removable.

24. As far as this drawing indicates, have you any instruction as to the method of filling and discharging the cylinder?

Ans. I see nothing that would indicate positively its use for filling or discharging solids or liquids or gases, or their relative position, if contained in said vessel, nor any allusion to or description of the same.

25. Describe how you understand from Fig. 11 the top of this stool is to be managed in order to remove the cylinder marked *a* therefrom, supposing, for the purposes of the question, the cylinder to be removable.

(Same objection.)

215 Ans. The slide marked *g* is removable and the vessel is taken out by removing the plugs or nuts fastened to the pivot, and by taking hold of the bottom of the cylinder tipped in the direction of the dotted lines and lifted out by an upward movement of the lower part of the cylinder. The lower cover *c*, not being able to pass the cross-piece of the chair or stool in such position, is first removed.

26. Is there any arrangement for the inversion, or turning bottom side up, of the top of the stool or table, or is it represented as fixed, with the exception of the slides before referred to?

(Same objection.)

Ans. There is no arrangement visible for so doing; and the slides, while they can be taken out, cannot be lifted up while in, nor yet turned over.

27. The funnel-shaped top of the cylinder *a* being removable, as indicated in the drawing, if the cylinder is intended to contain any solid which would be the most convenient way to charge it, through the open top or after removal from the table through the open bottom?

(Same objection; also assuming that the top is removable.)

Ans. The most convenient way of charging would undoubtedly be through the open top.

28. Explain what you understand to be the office of the bolt seen in the side of the stool, and whether it is connected with and a pivot for the cylinder *a*.

(Same objection.)

Ans. It connects the stool to the cylinder *a* by means of a pivot

to which the bolt is attached. It thereby allows the tipping of the cylinder *a* from the direction indicated by the letter *b* toward the same stop-cock, indicated by the letter *b*, of the inclined cylinder, indicated by the dotted lines.

29. Referring to Respondent's Exhibit 14, A. H. D., Ex'r, attached to the affidavit of Hampton E. Hill, state if you understand
216 the contrivance therein shown, and state the similarities and differences between it and the device described and claimed in your patent.

(Same objection.)

Ans. I do understand it. The contrivance consists of an old form of conical-shaped glass percolator, two of which are used, one marked *a*, tapering towards the bottom, connected by a tube, B, with its constricted outlet at its lower end, and at the other end of the tube B attached to the constricted inlet of the percolator or containing vessel for solids D, which has for its outlet for liquids a conconstricted outlet, F, as an essential part of the entire operating vessel, which outlet is removable, but when so removable leaves the vessel as incapable of performing the office for which as an entire and complete apparatus it forms a part of the whole.

It will be seen from this and a comparison with my patent and the specifications thereto attached, marked Complainants' Exhibit A, A. H. D., Ex'r, that in both we find an elevated reservoir capable of holding and discharging liquids, in both a constricted outlet for liquids connected to said reservoir by a tube, and in both a vessel for holding and filtering a solid to be placed therein, having a constricted inlet for the passage of liquids; but here the similarity ends, since in my patent and in Fig. 1 of Complainants' Exhibit A will be seen a vessel which, in order to be charged with the solid, is not first separated from the outlet for the same, which outlet forms an essential feature of Respondent's Exhibit 14, marked F, but constitutes by itself, and in combination with no other part outside of its internal surfaces, a complete mechanical contrivance for properly holding, receiving, and discharging the solids from its body from a wide end, as seen in Fig. 1 of Complainants' Exhibit A.

Also it will be noticed the shape of this vessel has been so made as to permit the diaphragm D, in Fig. 1, Complainants' Exhibit A, and is so described in the specifications thereto attached as to be placed and secured firmly against the drug or solid previously charged
217 within said cylinder, nor is there any requirement made limiting the quantity of drug to be placed within said cylinder, thereby enabling the diaphragm D to reach any surface against which it is to be placed, no matter how limited or varied the solids within this container may be in bulk or texture. In Respondent's Exhibit 14 it is the containing vessel D that rests upon the diaphragm E, and by its weight holds it down against the sides of the funnel-shaped constricted outlet for the liquid F. The diaphragm, therefore, needs the vessel F as an essential feature, for it is evident that without it the vessel D, being conical, and the diaphragm E on the outside thereof, would allow the contents to escape, the dia-

phragm E falling, having no support. The support, therefore, being an essential feature of this contrivance, has a constricted outlet for liquids after leaving the vessel, since, as an entire contrivance, it is the lower end of the combination. Furthermore, as has been stated, the diaphragm E of Respondent's Exhibit 14 is not placed against the drug, but the drug is set against the diaphragm, and if the vessel D were charged when inverted with a solid not tightly packed, and the vessel D then placed against the diaphragm E, the quantity of solid in D not having been sufficient to fill the vessel, the drug or solid in D would drop upon the diaphragm E, which would not be the case were the diaphragm secured against the drug by suitable means within the vessel at the upper surface of the drug before the vessel holding said solid became inverted.

This, it will be seen in Fig. 1 of Complainant's Exhibit A, has been done and it is capable of being done, namely, charging of the drug in the usual manner as in percolators, resting the solid substances on the bottom of the containing vessel, Fig. 1, Complainant's Exhibit A, close to the constricted inlet B, filling sufficiently with the same and securing the diaphragm in place when sufficient of the solid has been admitted. This office the diaphragm E, Exhibit 14, is not capable of performing, nor is it capable of performing the office of the diaphragm or straining vessel of a solid while
218 permitting a liquid to pass without the use of the funnel or constricted outlet for liquids F; also it is evident that the diaphragm in Fig 1 of Complainant's Exhibit A is within the container, and by being capable, therefore, of reaching the surface of the drug against which it is securely fixed, exerting such resistance to the expansion of the solids or drug as will cause the whole containing vessel to act as a press, allowing the liquid thus pressed out by the resistance to the expansion of the solid to force its way through the pores of the diaphragm D and be furthermore collected. This function of the diaphragm D of Fig. 1, Complainants' Exhibit A, being one that it is capable of performing with any varied quantity of solid contained therein, is one decidedly not a function of the diaphragm E, Respondent's Exhibit 14.

30. Look at Respondent's Exhibit 6, A. H. D., Ex'r, state if you understand the same, and explain the similarities and differences between the device claimed in the same and the device described and claimed in your patent.

(Same objection.)

Ans. I understand the same and see that both the device and the claims for novelty upon which said patent are based are for the use of hydrostatic pressure forcing its way upward through a vessel, the lower part of which contains liquid moving upward and the upper part solid through which said liquid moves and is forced to move by hydrostatic pressure. There is no similarity in this whatever to my patent, Complainants' Exhibit A, in which liquid finds exit through the solid by a downward motion, and also in which there is no means of holding liquid in the vessel containing the solid below the lowest part of the solid. The vessel in Respondent's Exhibit 6 for

holding the solid through which the liquor must pass has no wide discharge outlet for solids and liquids at its lower end while in operation. It will also be noticed on page 7 of Respondent's Exhibit 6, 3d line, a diaphragm *d** is spoken of as being placed upon the solid upon the upper part of the same, which upper
219 part remains as such upper part throughout the entire operation, while in my patent, Complainants' Exhibit A, Fig. 1, it will be seen that during the process of extraction the diaphragm D occupies the lower part of the containing vessel for the solid, the two being, therefore, entirely different in position during the operation of these contrivances.

(Adjourned to 3 p. m.)

3 P. M.

31. Are you accustomed to and familiar with the reading of drawings connected with chemical apparatus; and, if so, for how long a time have you been so familiar?

(Same objection.)

Ans. I am thoroughly, and have been so for eight years.

32. Looking at Fig. 11, Respondent's Exhibit 12, please state if the cylinder is indicated as reversible or not reversible, what motions of the same are indicated from the nature of the lines in the drawing, and explain by what rule in the reading of mechanical drawings you make your conclusions.

(Same objection.)

Ans. The cylinder *a*, Fig. 11, is not reversible, but simply movable, the extreme limit of movability being indicated by dotted lines, which plainly indicate both the direction and extent of that direction in which this cylinder is movable, the solid lines of this drawing indicating the cylinder in a vertical position, the dotted lines indicating its oblique position when moved to its utmost. It is evident from the rules of mechanical drawing that any position capable of being occupied by a vessel and illustrated would be so given and shown in dotted lines to illustrate any movements away from the position a figure is supposed to be in prior to any movement it is capable of.

220 33. Now state, if it was the intention of the draughtsman to indicate that this vessel was to be turned bottom side up, how the same would be delineated in this drawing, and what would be the position of the cylinder *a*, its cock, and screw thread in said dotted lines, and what other lines would appear on the drawing.

(Same objection, and witness not competent and evidence inadmissible.)

Ans. If such were the intention of the draughtsman the movement would be indicated in this drawing by curved dotted lines from a point from which the vessel was supposed to be moved at either extremity of the same through the arc described by its ex-

tremities in such movement, and it is evident that in such a case the cock *b* of said vessel would be below the stool in dotted lines, or as illustrating the ends of the vessel in full lines turned bottom side up, so that its outlet would point upward. The same might be said of the tops and bottoms of this cylinder in regard to their changed position. It is possible also that instead of using dotted lines the draughtsman would use arrows, curved and pointed in the direction of the movement resulting from such changed position.

34. Does the drawing indicate a table top which can be by any possibility turned either in a vertical or horizontal plane? If no, state why.

(Same objection, and as leading.)

Ans. The drawing does not, since it illustrates the top of this table fastened to its legs, so that without taking it all to pieces it could neither be made to turn vertically nor in a horizontal plane, there being no pivots visible in the drawing for its top to turn upon in any way, nor hinges either.

35. The vessel *a* being attached to the table by the bolt or pivot, as you have stated, and its tipping movement being indicated by the dotted lines, and the top being removable, at which end
221 would the vessel have to be filled, if it was ever designed to receive any substance at all, except through the tube *i*?

(Same objection.)

Ans. From the upper end, whereon is placed the stop-cock *b*.

36. If the vessel *a* was designed to be taken out of the stool, reversed in the hands, charged, stopped up at the lower end, and then placed on the stool in the position as indicated in the drawing would there be any use for the bolt or pivot and the slide *g*?

(Same objection.)

Ans. I can see no use to which the slide *g* would be applicable, nor the bolt and pivot, for the purpose of inversion and filling.

37. For what purpose, as you understood it, are the slides capable of being drawn out at either end of the stool, if such is the fact?

(Same objection.)

Ans. I don't know for what purpose, since I can see no figures nor description of the uses or application to be made of this device.

38. In the absence of any description referring to this drawing are you able to determine to what purpose the device therein shown is to be applied, or in what manner it is to be handled?

(Same objection.)

Ans. No, sir; I could not.

39. Referring now to Fig. 10 of the same page, state whether you are able to determine this to represent two cylindrical vessels capable of being taken apart, or one only.

(Same objection, leading, and as before.)

Ans. One only.

40. Would the curved line on that part of the figure which contains the rectangular holes or marks upon it indicate the
222 section between two cylinders—one the lower of which was capable of being slid into the other? And, if not, state why.

(Same objection.)

Ans. It would not, because it is very plain that the drawing shows a straight continuous line extending beyond this supposed separation, which, as is well known, would illustrate a surface continuous, not separate, and the outside of a cylinder that, if it were to telescope into the other, would be illustrated by dotted lines within the supposed outer cylinder, and the sides of which cylinder would be slightly wider in the drawing, since its diameter would have to be wider to admit of its telescoping than that of the lower one containing the rectangular figures.

41. It has been testified in behalf of the respondent in this case that in figure 10 are shown the hooks and openings for the purpose of locking the inner and outer cylinder referred to on page 3 of Respondent's Exhibit 14*a*. State if you find any such devices there indicated, and, if you do not, give your reasons therefor, in one form of your answer supposing the two cylinders to be united at the curved line already spoken of, in the other form supposing them to be united under the projection seen in the drawing indicated by the flare therein.

(Objected to as before, and also because the question erroneously assumes testimony to have been given as therein stated.)

Ans. I see no indications of hooks and notches in Fig. 10. If taken as two cylinders, the lower one ending at the curved line below the two rectangular figures to the left in the drawing and between it and the flare, then it would be plain that on this lower cylinder would be visible rectangular spaces that, considered in the light of notches and that such notches were to be fastened by means of hooks, it would be evident that the two rectangular notches above this would have no office, if the office of the notches is to have hooks
to be fastened into them for the purpose of holding the lower
223 cylinder in place, since the notches here would then be in the upper cylinder, a part not supposed to be supported; also the lines to the right of these two supposed notches or rectangular figures, while I do not believe it is meant to illustrate a hook for fastening into the notches of the supposed cylinder below it, yet it is plain from the drawing that if viewed as a hook or fastening it extends no farther than to the curved line representing in this supposition the end of the outer cylinder; therefore as a hook it could not catch or hold an object below its entire length, since it is evident that the notches below it would need a longer hook than one extending no farther than the end of the outer cylinder.

Second. Supposing the end of one cylinder to be where the lines begin anew in a parallel vertical position under the flare of this vessel, in Fig. 10, and that this lower vessel telescopes into the upper one, there is no place indicated in the upper vessel, either on the flare

or above it, where a hook or other fastening is shown that could be made to hold or support the lower vessel, and it is evident, as before stated, that the hook or hooks must be on a different part of the vessel from the notches, if intended as a means of support for holding an inner vessel to an outer; but I must admit it is very unreasonable to suppose anything in this drawing is intended to convey the idea of there being notches or hooks, meant to be represented below the flare, as represented in Fig. 10.

42. Do you find anything in this figure answering to the description found on p. 3 of Exhibit 14*a*, as follows, beginning with the words "The outer cylinder," l: 6, and ending with "kept in proper position?"

(Same objection.)

Ans. I do not.

44. Please look at Respondent's Exhibit 15, now shown you, and state if it is made in conformity with the description found on pp. 2, 3, and 4 of Exhibit 14*a*, and state, if it is not, in what respect it differs.

224 (Same objection.)

Ans. This exhibit is not made at all in conformity with said description. In the first place, no mention is made in the description of a long tube to be connected to the body of a cylinder forming part of this exhibit, nor is there any mention made of a connecting or of place for a long connecting tube in said description. The inner cylinder of the containing vessel telescoping within it is not described in the alleged translation as this one is made, having a fixed diaphragm, nor is there a second plate against which the inner cylinder is to be placed, nor is there any mention made of a welt or flange on the outside of such inner cylinder as is found in this Exhibit 15; so that if Exhibit 15 has been made from a description of this cylinder or percolator the mechanic has drawn largely, either from other descriptions or upon his imagination.

45. Referring to Fig. 10, in Exhibit 12, state the difference, if any, between that drawing and the body of Exhibit 15.

(Same objection.)

Ans. I find a pipe, *b*, omitted from Exhibit 15. I find also a tube, *f*, in the drawing, and another tube, *f*, above it, separate and distinct, connected with a tube, *h*, by a pipe, *g*, which I do not find upon Exhibit 15. I find a flare in the center of a long cylinder that is not found upon Exhibit 15, said flare being stationary in the drawing, but movable in Exhibit 15. Considered as a cylinder I find nothing in the drawing that would indicate a telescoping arrangement of its parts, nor anything that would, by any mechanic, be considered notches and hooks as found in Exhibit 15, nor of hooks upon the upper half of said cylinder above the flare connected with the main body of the outer cylinder opposite each other or at any other point, as I find them on the Respondent's Exhibit 15. Furthermore, I find no connection with a screw thread illustrated in the drawing at the

upper part of the supposed cylinder, Fig. 10, but I find a long tube connected without visible means of removal at a point about
225 equal to the length of the body of the cylinder from the letter *c* to the end of the flare; whereas in Exhibit 15 there is a small projection above the closed top of the cylinder with a constricted inlet furnished with a screw thread, intended, as it would seem, to be fitted on the long tin pipe forming part of Exhibit 15. I also find, as part of Exhibit 15, a funnel-shaped end not shown in the drawing, which, from appearances, may possibly, if it is a cylinder, be completely closed, for aught that appears in the drawing.

(Adjourned to May 9, 1884.)

MAY 9, 1884.

46. Look at Respondent's Exhibit 8 and state if you understand the same, and explain the similarities and differences existing between the device therein described and the subjects-matter of your patent.

(Same objection.)

Ans. I understand it. There is no similarity between Exhibit 8 and my patent, the drug being charged from a wide filling end and made to rest on a fixed diaphragm in Exhibit 8, while the liquid is forced in by pneumatic pressure and not by hydrostatic, in order to percolate through the solid; whereas in my invention the drug is charged from a wide filling end and the diaphragm made to rest upon it, holding it in place, and liquid admitted by adjustable hydrostatic pressure, obviously entirely different mechanic devices; also the liquid enters from a direction in which the drug or substance was charged, and proceeds downward in Respondent's Exhibit 8; whereas in my invention the liquid enters in an opposite direction from which the drug was charged, obviously entirely different mechanisms for the purposes for which they are applied.

226 47. Look at Respondent's Exhibit 7 and state if you understand the same, and explain the similarities and differences between the device described therein and the subject-matter of your patent.

(Same objection.)

Ans. I understand Exhibit 7, and I find no similarity between it and my patent in this suit, there being no elevated reservoir adjustable to different hydrostatic pressure of liquid in Respondent's Exhibit 7, nor in the vessel containing the solid is there any adjustability or movability of the diaphragms between which the drug or solid is placed in Respondent's Exhibit 7, nor is the outlet for solids I, in Complainants' Exhibit 7, the outlet for liquors, which I find is here constricted and illustrated by the cocks H H and G G; whereas in my patent in this suit there is an elevated reservoir, a constricted inlet for liquids, adjustability of hydrostatic pressure by means of a flexible tube, a diaphragm against which the solid is

placed and fixed, and a wide discharge outlet for liquids, the same being the charging and discharging outlet for the solid. These features are evidently entirely dissimilar to those found in Respondent's Exhibit 7; nor do I find a combination of such features as I have described in my patent in this suit present in the Respondent's Exhibit 7.

(Direct examination suspended at this point (May 8, a. m.) and cross-examination interposed by agreement.)

MAY 12, 1884.

Direct examination continued by Mr. CLIFFORD:

(Respondent objects to any further examination of this witness except as to matters contained in the book, which complainants' counsel, when respondent consented to cross-examine, said
227 was to be the only subject of further examination, and which book was expected to arrive on Friday, noon train.)

(Counsel for complainants did not waive inquiry upon other subjects, but merely suspended to await the arrival of the book, of whose contents he was ignorant.)

(Counsel for respondent gives notice that he shall not agree to vary or suspend the usual and direct course of proceedings in this cause for complainants' accommodation hereafter except upon a written statement and agreement signed by complainants' counsel.)

48. Look at Complainants' Exhibit I and state if the cut therein seen correctly illustrates the percolator made and sold by the respondent.

(Objected to; inadmissible, incompetent; if taken at all must be the subject of a new deposition; calling for the opinion of witness and not rebuttal.)

Ans. It does, substantially. The body, Fig. 2, shows in sectional view the percolator as made and sold by John Berry, the respondent, before this suit began. Fig. 1 shows the percolator body in connection with an elevated reservoir, having connection with a tube, C, and united at its lower end with the percolator body A at its constricted end, the wide discharge end of said body being the lower part of the percolator, the constricted end being the upper part of the same.

49. Referring to int. 19 of the direct examination of the respondent, wherein he, in substance, states that the only thing new in his improvement is the interior arrangement and device holding the drug, state what, in your view, was new at the date of your letters patent in said respondent's device in addition to the diaphragms and his devices for holding the same in the cylinder.

(Objected to, form of the interrogatory and to the opinion of witness being given for want of qualification and as being inadmissible, the same being matter-in-chief, which should have been offered in the opening deposition of the witness.)

Ans. Up to the time of my letters patent in this suit it
228 would have been new to have, in combination with a percolator having a constricted inlet for liquids at its upper end and a wide discharge orifice for liquids and solids at its lower end, an adjustable diaphragm, adjustable to any position occupied by solids contained within the same and capable of being fixed in such adjustable position, said percolating vessel being connected at its upper end by a constricted inlet for liquids into the same to a tube that at its upper end is connected to an elevated reservoir capable of conducting through said tube liquids producing adjustable hydrostatic pressure at the lower base of said column of liquid. The method of holding the diaphragms, stated as being new at the time of respondent's invention, was not new, since it is described as new at the time of my letters patent in this suit, which was prior to the time mentioned in this statement.

50. Have you made a translation of Respondent's Exhibit 12, pp. 157, 158, 159, and two lines on p. 160; and, if so, is the same correct according to your best knowledge and belief?

Ans. I have, and the same is correct.

(Said translation is here introduced and marked "Complainants' Exhibit Rosenwasser Translation No. 2.")

(Respondent's counsel objects to the introduction of this exhibit, as it discredits testimony already offered by complainants.)

51. Please look on p. 79 of the book now shown you, to wit, "Proceedings of the American Pharmaceutical Association, at the 28th annual meeting, held in Saratoga Springs, New York, September, 1880, Philadelphia, Sherman & Co., printers, 1881, vol. 28," and state whether Fig. 26 and the description beginning at the bottom of p. 78 and ending with l. 16, p. 80, describes a method of percolation and the common one of introducing the liquid at the bottom of the vessel and drug.

(Objected to; leading, irrelevant, concerning a matter not now in evidence, and not rebutting.)

Ans. It describes a common method of introducing liquid
229 from the bottom of a percolator through a cork fitted therein, the extracted matter being forced upward, the liquid being forced up by hydrostatic pressure of the liquid in a tube which is elevated above the percolating vessel, and is filled through a siphon from an elevated reservoir; and the drawings illustrate the same very clearly.

(Complainants now offer in evidence the drawing and passages inquired of, to be marked Complainants' Exhibit L, to be referred to and not printed.)

(Respondent's counsel objects to the introduction of said Exhibit L as not in rebuttal.)

(Intermission, 1 to 3 p. m.)

3 P. M.

(Counsel for complainants states that his direct examination is closed, except as to certain matters which he will make the subject of a motion to the court.)

(Counsel for respondent states that he declines to resume his cross-examination of the witness until the direct examination is closed, having had sufficient of such experience already in this case.)

(Notice is hereby given to the counsel of respondent here present that as soon as the court can be reached permission will be asked therefrom by the complainants to show that Complainants' Exhibit G is the percolator such as made and sold by the respondent; that is all the additional direct questions to be put to this witness, or the same will be put in the redirect, if allowed.)

(Counsel for respondent excepts to the insufficiency and uncertainty of the statement of complainants' counsel, above written, as to his time, place, and purpose, if the same is intended for notice of his proposed proceeding in this suit.)

230 (Complainants' counsel presents the witness for further examination, said witness being present.)

(Respondent's counsel says that he is incredulous as to the expressed intention of complainants' counsel.)

(Examination-in-chief closes here.)

Cross-examination by WILBUR F. LUNT, Esq., counsel for respondent:

X Int. 1. Is it practicable to translate German, word for word, into English, and convey the exact sense as expressed in the original?

Ans. Inasmuch as some phrases of several words in one language are expressed in another by a single word, and *vice versa*, this would in the German apply also, so that certain parts of speech in this language could not be translated word for word, though it would be possible to convey the idea.

X 2. Is it or not true that equally good scholars, having a knowledge of German, would, in translating German idioms into English, use quite different words in expressing the ideas in English embodied in the German idiom?

Ans. The words would be different, though the idea, if definite in the German language, would be capable of being conveyed definitely into the English. Of course, if indefinitely conveyed in one language it would be as indefinitely conveyed in the other.

X 3. Is it not true that you had difficulty in translating with fluency and ease the extract from Geiger's Pharmacy, p. 157 *et seq.*, Respondent's Exhibit 13?

Ans. I had no more difficulty in so translating the same than a conscientious and definite translation would require at the hands of any one expert and for the first time called upon to examine and translate the same.

231 X 4. Have you examined the two editions of Geiger's Pharmacy, one edited by Liebig, and printed — Heidelberg, 1843, Respondent's Exhibit 12, and the other printed — 1830, Re-

spondent's Exhibit 13, especially from pp. 157 to 162, inclusive, of each, and read the article there relating to the Real'sche Presse; and if yes, are the articles in each identical?

(Both books handed to witness.)

Ans. Without translating each one, I could not say.

X 5. Will you please to look at the articles and compare the German words in each, and state whether or not they are identical?

Ans. As I could not do so without a great deal of labor, I refuse to perform the labor for the defendant, on the ground that it would be a task of too long a duration and occupy too much of my time to compare, word for word, so much.

X 6. Will you point out any differences in the language or words used in each edition before referred to, the books being now in your hands?

Ans. The task is of too large magnitude.

X 7. State whether or not it is possible for you to translate into English the pages last mentioned, several times upon different occasions, and express the meaning thereof each time in identical words.

Ans. No, sir.

X 8. Now, will you please begin on p. 157, Respondent's Exhibit 13, at the words "Die Real'sche Presse," and read, translating into English, to p. 161, and to the end of the sentence closing with the words "sich anwenden."

(Counsel for respondent wishes the examiner to note the hour and minute when witness begins to translate.)

(MEM.—Time 12.20. A. H. D., examiner.)

(Objected to as incompetent. The defendant has submitted his own translation. The witness is not obliged to translate this unless the defendant takes the same as his evidence.)

232 Ans. The Realsche press consists essentially of a hollow cylinder, in which the substances to be extracted, in pulverized condition, between two sieve-like perforated plates tightly packed, are contained, so that it cannot move from either side. When the cylinder is open at both ends then it will be necessary to place a cover upon one end, air-tight, which has a hole in the center through which a high tube, also air-tight, is placed. Between the cover and the upper sieve-like plate some space must be left. During extraction the cylinder is placed upright, solidly, so that a vessel for receiving the liquid can be placed underneath. One pours through the tube, which may, as desired, be narrow (only not capillary), liquid upon the substance and keeps the tube itself always filled therewith. The menstruum presses through the substance and comes out well laden with the extracted matter below.

From the p. 28, mentioned hydrostatic law, it is known that every liquid column at its base has a pressure according to its height, though it may otherwise at its base be broader or narrower. For pharmaceutical use various modifications have been made with the Realsche Presse, whose description in pharmaceutical and chemical journals lies scattered. My own simplification made known in that,

p. 124, mentioned pamphlet, consists essentially in this, that instead of a cylinder of pure tin open at both ends, which is closed with a cover, a cylinder is provided with a bottom having in the center a hole which forms a hollow projection one inch high. On the bottom either small pieces of wood are laid or the cylinder is provided with, one inch above its bottom, three or four projecting studs or a projecting ring on which the sieve-like or perforated plate is laid. On this is laid a woolen rag and the substance to be extracted, uniformly spread, while, according to the necessities of the case, it is pressed over it; then another rag and a second plate is laid on. For holding these tightly braces answer, of various lengths, which, either under projecting studs at the end of the cylinder or under cross-pieces, are placed, which pass through holes that are
233 found on the under outside part of the cylinder upon the projecting welt; or one has made for himself a second, on both ends open, cylinder of sheet tin, which passes snugly into the first, but can be easily pushed in and out. This has throughout its whole length, in distances of about one-half to two inches, opposite and always horizontal slots, which, for the better durability of the cylinder, can be made alternately on different sides.

The outside cylinder has on its open end movable hooks. One places, therefore, the inner when the outer one is fixed upon the perforated plate and presses the hooks in the proper slots, by which all is held together. This arrangement is especially very handy for small machines and answers also for large ones; otherwise one can have made for himself also an iron ring which fits in the cylinder. In this ring two to three strong iron rods are sunk to equal lengths, screwed in. At one length—that is, about seven-eighths the height of the cylinder—they are bent outwardly, so that the returning outer ends are parallel with the inner. These outer ends must be at least as long as the cylinder. They go through the holes in the welt. Over the welt one finds a metal ring, which also has holes through which the rods pass; these holes contain small screws which answer for holding the rods tightly. (One can even have these screws in the welt itself; then, however, this cannot be made of tin, but must be of iron or brass; it must be tightly connected with the cylinder, which so would not be necessary. The ring can be movable and easily worked.) All parts of this arrangement or apparatus, at least those going into the cylinder, must be heavily coated with tin.

(Intermission, 1 to 2.30.)

234 2.40 P. M.

The working is very simple. You push the rods through the holes in the welt and the outer ring until the inner ring lies tightly upon it and screws them tight. A very practical change of the Realsche press has been made by Beindorf. The cylinder is fitted into a stool, whose cover is movable, so that through the turning of the thing the press may be filled and connected with the tube. The empty space of the cylinder is filled out with rings of tin and

the apparatus is locked with a funnel whose cock is fitted into a projecting welt. (See Magazine for the Pharmacy, vol. IX, p. 185, where the machine also is pictured.)

Similar machines are made of good sheet tin; also stone-ware or wood. The methods for holding fast the substance to be extracted are then made according to the structure of the cylinder. The filled cylinder, with its bottom prepared as above, is placed upon a chair which has a hole in its center, and which fits the same and is held with its welt. One places a receiving vessel underneath. The cylinder must be open below. One can, however, put a funnel underneath to hinder the spurting and contaminating of the extractive, but air-tight; the opening should not be made, else the working of the machine would be prevented. The upper empty space is filled with menstruum, and in the opening of the bottom a tube is fitted. This can be of sheet tin, glass, wood, or a leather tube, &c.

Most fitting to pharmaceutical purposes is a tube of sheet tin; it needs to be of a thickness not greater than the little finger; its height should be from eight to twelve feet. On the upper end it broadens about one foot high, funnel-formed, so that the upper end should be one and one-half inches in the clear. Generally they believe a column must be much higher—

(5 minutes interruption here.)

30 to 60 feet high, which height, however, limits very much
235 its application. According to my experience the mentioned height, from 8 to 12 feet, for pharmaceutical purposes is sufficient. One can quickly extract with this up to 20 pounds of plant substance. The liquid column shall press only so much that the percolate, which, according to its nature, is pressed in more or less tightly, shall go through slowly, in order to come in contact with all soluble parts of the same, and so, while always new liquid follows the first driven before it, the cells by-and-by are thoroughly washed out. It works in this manner just as well with an 8-foot column as with one 60 feet high, only the latter passes through the substance faster. By too much pressure of such a high column of liquid even strong machines are burst, with damage to the operator. You bore into a cork placed in the opening in the bottom and place the under end of the tube through. The cork will be softened with hot water and then tightly pressed into the opening. Without further luting a good cork is sufficiently air-tight and lets no liquid through. Near the upper end of the tube a vessel is placed with the menstruum so that the surface of the liquid should be lower than the end of the tube. One sinks now a siphon in the liquid and in the tube and draws air with the mouth through the tube, while with the lips, the thumb, and the forefinger the influx of the same from without is being hindered. The liquid will raise itself and, through the siphon, flow into the tube. This will then be filled with it, and so the liquid works, pressing and dissolving upon the substance. It presses through and comes laden with extractive matter—first of a syrupy consistence, very clear. The liquid is allowed to press through so long, until the prescribed quantity has passed, or until one recognizes, through

the taste, smell, and color of the percolating liquid, that all is extracted.

One has here only to see that the siphon is always dipped under the liquid and also, from time to time, to fill the vessel, so that the surface is always below the level of the end of the rod, because
236 otherwise the tube would overflow. That the working may be made to stop as wanted one places a cock on the tube that can be closed or one closes, after taking away the siphon, the upper end of the tube. For the extracting of the liquid I have made on the cylinder, upon the side where the first diaphragm lies, a small tap, bent obliquely downward, which is provided with a cock or closed with a cork.

One can so let all the liquid out of the tube and cylinder as desired, and the substance can, with various liquids, be extracted without the apparatus being taken apart. If the under part of the tube is bent over or a piece of bent tubing is brought into air-tight contact with the cylinder connecting this to the tube and turns it over with the open end up and proceeds otherwise as just mentioned, one has the same working. The holding tight of the second diaphragm can then be much easier done, and, with screws, &c., a substance can, during extraction, if it is necessary, be pressed stronger. The extract can, through the outer tube on the cylinder or with a syphon, be drawn off. The (p. 127) mentioned filter machines of Wurzer and Romerhausen are applications of such devices for filtration. (The elevated liquid column is, for extraction, not always even necessary. So Hanle extracts with a machine of two telescoping cylinders, whose arrangement inside is like—on p. 157 described—Realsche presse. The inner cylinder is directed upward and fastened. You pour the liquid in this. It passes through the moistened substance packed between both cylinders and comes out laden with extractive matter. (See Magazine for Pharmacy, vol. XI, p. 57.) Our coffee filter machines are similar apparatuses, though here the extraction is, according to the mass of substance, much slower, and can only be applied in a small way.

(Time at closing, 3.45.)

(Counsel for the complainants wishes the magistrate to certify whether, on the whole, the witness has not translated about as fast as he could write it.)

237 (MEMO.—The time occupied by the witness in translating being noted on the record, the examiner leaves the court to infer the rapidity of the work.)

X 9. Referring to Respondent's Exhibit 12, containing in the back part thereof Figs. 10 and 11, to which your attention has been called, will you state whether or not you find those figures referred to on pp. 157 and 158 of said exhibit?

(Objected to, because calling for a translation of a portion of a public work not cited in the answer and to which complainants have not been referred.)

Ans. I decline to answer, because the question refers to passages my attention has not been called to in the answer.

X 10. Please look at the amendment of the respondent's answer now handed to you and say whether or not you still decline and refuse to answer X Int. 9, which I now repeat.

Ans. I decline to make any translation, as I find no such translation in the respondent's testimony.

X 11. Do you refuse to state whether or not you find those figures referred to on pp. 157 and 158 of said Exhibit 12?

Ans. No translation of those pages having been given to me by the respondent, I can find no such references.

(Respondent's counsel calls the attention of witness to the 16th line from the bottom of p. 157 in his Exhibit 12.)

X 12. Will you please to state whether or not Fig. 10, in the back part of said book, on the copper plate, is referred to in said line?

Ans. Not finding any translation of said line, I cannot undertake to say whether or not it is referred to.

X 13. I call your attention to the 3d page of Respondent's Exhibit 14*a*, where, after the words "proper position," are inserted within quotation marks, See Fig. 10 of copper plate. Please state whether or not those words, "See Fig. 10 of copper plate," occur in the German language in the 16th line from the bottom of p. 157 of Respondent's Exhibit 12.

238 (Objected to for the following reasons: The volume in which the German words occur, which the question seeks to have translated, is the edition of Heidelberg, 1843. The book of which Exhibit 14*a* purports to be a translation is a Stuttgart edition of 1830, of a book by Dr. P. L. Geiger. The work in which the German words occur, upon which the question is based, is a work by Dr. Justus Liebig. The words on the 3d page of Exhibit 14*a* are manifestly not the words of the translator, and are inserted in pencil between the lines, and expressly refer to Liebig's edition without stating of what book or treatise this Liebig edition may be, because the pencil insertion was manifestly made after the translation and in a different hand.)

Ans. Not finding any translation of the German given by the respondent that will compare with these words, I cannot say whether they are the same.

(Respondent's counsel requests that entry be made that witness declines to answer cross-interrogatories from cross-int. 9 hitherto, and moves that the examiner report to the court such refusal, in order that counsel may move the court to take such action herein as shall compel the witness to make true and direct answer to the foregoing interrogatories.)

(MEMO.—The examiner hereby reports witness' refusal to answer said interrogatories to the court.)

X 14. Look at pp. 157 to 159, inclusive, Exhibit 12, and state

whether or not you have read the text there printed or any part of it, either as it is printed in the book you now have or in Exhibit 13.

(Objected to, because assuming that the text of Exhibits 12 and 13, in the passages referred to, are the same, which does not appear.)

Ans. Not finding any translation of the subject-matter of Exhibit 12, pp. 157 to 159, inclusive, I cannot assume to know whether the printed matter appearing in Exhibit 13, pp. 157 to 159, inclusive,
239 the alleged *the* translation of which is presented, compares in identity or otherwise with the printed matter in German of the Respondent's Exhibit 12, pp. 157 to 159, inclusive.

(Counsel for respondent objects to counsel for complainants conversing and interrupting him in the midst of his answering.)

(Counsel for complainants offers, a reasonable time being given, that the witness shall present a translation of the passages referred to in Exhibit 12, to wit, pp. 157 to 159, inclusive, and submit to cross-examination thereon if the same will be accepted by the other side as correct.)

(Respondent's counsel replies that he can conduct the cross-examination of this witness without the assistance of complainants' counsel, and simply requests that complainants' counsel abstain from interrupting the witness in making direct answer to proper interrogatories by him put to the witness, and he repeats now cross-int. 14, and requests the witness to answer it directly and without evasion.)

(Counsel of complainants renews his objection and says that he merely asked witness if he would make the proffered translation, to which witness replied that he would; and counsel now renews his offer to make to the court a correct translation, but does not think that the witness in cross-examination should be called upon to translate for the respondents passages which *they* have not translated or offered in evidence without reasonable time for preparation.)

X 15. Question (X 14) repeated.

Ans. I have read parts of both.

X 16. Have you read the text as printed in Exhibit 12, pp. 157 to 159, inclusive?

Ans. I have not.

X 17. Have you read any part of it?

Ans. I have.

X 18. What lines have you read? Give them all.

Ans. Without reading it all over again I could not tell. I don't remember.

240 X 19. Please take the book and read over those pages, answer what lines therein you have read, giving them all.

(Witness takes book, Exhibit 12.)

(Adjourned to May 10, 10 a. m.)

MAY 10, 1884—4.15 p. m.

(Respondent's counsel protests that witness has consumed the entire day making a translation which respondent's counsel has not called for since witness refused to answer.)

(Counsel for complainants says that he has been ready at any moment to continue the cross-examination since 10 o'clock this morning, but that the witness was not called upon by the respondent's counsel until 4.15 p. m., above noted, when the request appeared in the form of the above protest.)

(Witness resumes in answer to X Int. 19:)

Ans. What book?

X 20. Referring to Respondent's Exhibit 12, containing in the back part thereof Figs. 10 and 11, to which your attention has been called, will you state whether or not you find those figures referred to on pp. 157 and 158 of said exhibit?

Ans. As these illustrations have been pasted into the back part of this book, and as certain letters are found attached to these figures which I fail to see in said pages which I have read, and finding dissimilarities between these illustrations and this description referred to, it is impossible for me to conceive them the ones referred to.

(Answer objected to as not responsive.)

X 21. Referring to Respondent's Exhibit 12, containing in the back part thereof Figs. 10 and 11, to which your attention
241 has been called, will you state whether or not you find those figures referred to on pp. 157 and 158 of said exhibit? Please answer this question yes or no.

Ans. I find Figs. 10 and 11 referred to on said pages, but whether these are the ones referred to I am unable to say. I do not believe they are.

X 22. Do you find on pp. 157 and 158 of Exhibit 12 references to Figs. 10 and 11 on the copper plate?

Ans. The references are to Figs. 10 and 11 of the copper plate.

X 23. Do you find in the back part of said Exhibit 12 a copper plate with figures thereon, marked 10 and 11, respectively?

Ans. Not being an expert in printing, I am unable to say whether they are copper plate or not, nor do I find them called so on either page. I find Figs. 10 and 11, but could not say how they were printed.

X 24. Do you find any plates in the back part of Exhibit 12 containing figures marked, respectively, 10 and 11?

Ans. I do.

X 25. On which of the plates?

Ans. On the one marked table I.

X 26. Will you read the words preceding the words which you have given as "table I" as they are printed and give the translation?

Ans. Zu Geiger Handb. d. Pharmacie, I Band (5te Auflage), Taf.

I, meaning, "To Geiger's Handbuch of Pharmacy, 1st vol., 5th edition, table I."

X 27. Please look at the 16th line from the bottom of p. 157 of Respondent's Exhibit 12 and examine the 10th and 11th lines on p. 3 of Exhibit 14*a*, and read the lines 16 and 17 from the bottom of said p. 157 and translate the same into English, and also read lines 10 and 11 on said page 3 of Exhibit 14*a*.

Ans. Reading from Respondent's Exhibit 14*a* I find as follows:
L. 10: Openings mentioned by which means everything is
242 kept in. L. 11: ("See figure 10 of copper plate" in Liebeg's edition.) L. 12: Proper position. This arrangement is very handy for small machines.

Beginning at l. 16, p. 157, of Exhibit 12, I translate as follows: L. 16: Whereby all is held fast. (See Fig. 10 of the copper plate.) L. 17: This manner of fixing is very convenient, particularly for small machines.

X 28. Please read the first two lines at the top of Exhibit 14*a* and the 11th and 12th lines from the top of p. 158 of Exhibit 12, translating the same.

Ans. "Pharmacie" (Bd. IX, p. 185, where an illustration of the machine may be found). "Also figure 11 of copper plate," in Liebig's edition. These are the two lines from Exhibit 14*a*. I translate the 11th and 12th lines referred to as follows: "Fitting a projecting welt. (See Magazine for the Pharmacy, vol. IX, p. 185; also Fig. 11 of the copper plate.")

X 29. Do you find Figs. 10 and 11 of the copper plate referred to on pp. 157, 158, and 159 of Exhibit 12, except as you have read them in your last two answers?

Ans. I find reference made of the copper plate—which copper plate or where not stated—in those lines only.

X 30. Have you read from the mark X before Die Realsche Presse, on p. 157, Exhibit 13, near the middle of the page, down to the botton of page 159, in the German, as it is printed.

Ans. I have read and, my testimony shows, submitted a translation of the same.

X 31. Have you also read in Exhibit 12, from the top of p. 157 to the end of the sentence closing with the word anwenden, near the middle of p. 159, as it is in the German?

Ans. I have.

X 32. Have you read in Exhibit 13, from p. 157, near the middle of the page before referred to, to the word anwenden, near the middle of p. 161, as it is in the German?

Ans. I have.

X 33. Will you please point out any words in the German
243 appearing in Exhibit 12 that do not appear in Exhibit 13 within the spaces mentioned?

(Adjourned to May 12, 1884.)

MAY 12—10 a. m.

Ans. (1.) On p. 157, l. 10 from top, Exhibit 12, the word gestellt appears, instead of fest gestellt on p. 157, Exhibit 13, l. 17 from the bottom.

(2.) On p. 157, Exhibit 12, l. 20 from the top, the figures 130 appear, instead of 124 on p. 157, Exhibit 13, l. 4 from the bottom.

(3.) On p. 157, Exhibit 2, l. 16 from the bottom, after wird, the following appears (siehe Fig. 10, der Kuppertafel), which does not appear in Exhibit 13.

(4.) On p. 157, Exhibit 12, l. 9 from the bottom, appears die auseren enden, instead diese ausern enden, p. 158, Exhibit 13, l. 13 from the bottom.

(5.) On p. 158, Exhibit 12, l. 7 from the top, appears the word stahl, instead of the word stuhl, p. 159, Exhibit 13, l. 6 from the top.

(6.) On p. 158, ll. 11 and 12 from the top, appears, after S. 185, the following: Ferner, Fig. 11, der Kupfertafel, which does not appear in Exhibit 13; but after S. 185, in Exhibit 13, appears the following: Wo die Machine auch abgebildet ist, which does not appear in Exhibit 13.

(7.) On p. 158, Exhibit 12, l. 23 from the top, appears, in parentheses, the following: (Die nähere Beschreibung der bequemeren Einrichtung mit dem Stuhl, der Einen beweglichen Deckel Enthält, in welchem der cylinder steckt, siehe am Ende bei der Erläuterung der Kupfer), which does not appear in Exhibit 13.

244 (8.) On p. 159, Exhibit 12, l. 13 from the top, appears, in parentheses, the following: (Siehe die Abbildungen), which does not appear in Exhibit 13.

(9.) On p. 159, Exhibit 12, l. 26 from the top, appear the figures 133, instead of 127 on p. 161, Exhibit 13, l. 2 from the top.

MAY 13, 1884—10.30 a. m.

X 34. Referring to your last answer, will you please translate the German words under each number in your answer?

Ans. (1.) Gestellt means placed; fest gestellt means placed securely.

(3.) (See Fig. 10 of the copper plate.)

(4.) Die auseren enden means the outer ends; diese ausern enden means these outer ends.

(5.) Stahl means steel, also steel plate; stuhl means stool.

(6.) Ferner, Fig. 11 der Kupfertafel, means further, Fig. 11 of the copper plate, and wo die, &c., means where the machine is also represented.

(7.) Die nahëre, &c., means the closer description of the more convenient arrangement with the stool which has a movable cover into which the cylinder is set. See at the end by the explanation of the copper.

(8.) (See the drawings.)

X 35. Do you know the state of the art of drafting and the methods of illustrating different parts of machines and their operation forty years ago in Germany?

Ans. Not all kinds of machines; but I know the state of the art used in drafting forty years ago in Germany pertaining to pharmaceutical apparatus.

X 36. To what particular works relating distinctively to
245 and describing the art of drafting machines and their methods of operation can you refer?

Ans. Works relating distinctively to the art of drafting machines I have never read.

X 37. Whence, then, have you acquired knowledge of the art of drafting machines and representing their operations on paper as it existed forty years ago in Germany?

Ans. From a collegiate education, in courses of lectures on pharmacy and pharmaceutical technology at the Phila. College of Pharmacy, in 1876–'7; prior to which time and since then through a course of self education by means of books illustrative and descriptive of the art of that time.

X 38. Please cite the works relating specifically to the state of the art referred to at that time—*i. e.*, the art of drafting, &c.

Ans. Mohr's Compendium of Pharmaceutical Technology, printed in 1847, in Germany.

X 39. Do you now hold that book in your hand?

Ans. I do.

X 40. Will you refer to the pages in that book which refer to the art of drafting machines and illustrating their operations on paper as it was in Germany forty years ago.

Ans. No such machines are referred to in this book.

X 41. In what part of that book is there any description of the state of the art of drafting machines or apparatus as it existed in Germany forty years ago?

Ans. I misunderstood X Int. 40, believing it referred to machines for drafting, but such descriptions as that interrogatory referred to may be found on pp. V, VI, VII, and VIII of said book.

X 42. Will you please read, translating into English, such references?

Ans. The necessary understanding for such an apparatus is the presentation of illustrations. Until now this has been done through lithographic or copper plates which were inserted into phar-
246 maceutical works. These drawings were all drawn without a scale, made very light, rarely finished, complete, and partly without clearness. The explanation of these plates was a hindrance to their usefulness. The zylographic drawings which are taken in the text recommend themselves as a welcome substitute of those other illustrations. It was at once my intention through few drawings by means of perspective, which yields the greatest clearness, to combine the exactness of geometrical expressions. In such places where, by means of a transverse section or in an entire view or without cover, the apparatus could be made visible I have followed this plan. For examples, there are Figs. 16, 37, 38, 48, &c., &c. The diminution quotient is noticed through a fraction, $\frac{1}{10}$. This means that all the dimensions should be multiplied by ten. The drawing is through this an actual art drawing.

X 43. Is that a fair exhibit of the contents of works relating to drafting and illustrating on paper the operations of machines from

which you have acquired your knowledge of such methods of illustration?

Ans. It is.

X 44. You have stated in answer to direct int. 48 that the cut in Complainants' Exhibit I shows the percolator as made by John Berry, the respondent. This answer was made on the forenoon of the 12th day of May inst. Did you then base your answer to that question upon hearsay or actual personal knowledge?

Ans. Upon actual personal knowledge.

X 45. What actual personal knowledge that John Berry made and sold such percolator did you then have?

Ans. The admission to me by John Berry himself that the same percolator was one made by himself or for him, which admission was made during my last visit to Portland, when Mr. Berry was present in this room.

(Intermission, 1 to 3 p. m.)

247 Redirect examination:

R. D. 1. State all, relative to said percolator, that the respondent Berry said to you at the time of making the admission referred to by you in answer to X Int. 45 and constituting part of said admission.

(Objected to; irrelevant, the answer to X Int. 45 not being responsive, and this interrogatory calling for matter not in cross-examination.)

Ans. Mr. Berry, in answer to my question whether said percolator was made by himself, told me that it was, and that he sold with it another larger percolator, and also tubing sufficient and reservoir. He showed me the internal construction of the percolator and explained the workings, taking a key that he had in his pocket to remove the diaphragm, explaining that the rod was made of a new kind of metal, called phosphor-bronze, which did not corrode with tannin or other vegetable matters; and he also told me, during this same conversation, that he was about to get up a filtering apparatus or filtering-rack, in which this same metal was to be a novel feature. The conversation turned upon the fact that it was strange that he had not read the advertisements that I sent out to every State in the Union, to every druggist, nor his having read a complete description of my percolator appearing in the Druggists' Circular of November, 1879, while yet admitting that he subscribed to the same. The date of this conversation was during the time of my first examination when in Portland, and the place was the clerk's office.

(Respondent's counsel moves that this answer be stricken out, being inadmissible, not relating to any matter referred to by him in cross-examination, being gratuitously and improperly interposed by the complainant and his counsel.)

NATHAN ROSENWASSER.

Attest: A. H. DAVIS, *Examiner*.

248 PORTLAND, *May* 15, 1884—3 p. m.

Present: Wm. Henry Clifford, counsel for complainants; Wilbur F. Lunt, counsel for respondent.

Deposition of William E. Emery.

Direct examination by Mr. CLIFFORD:

Int. 1. What is your name, age, residence, and occupation?

Ans. William E. Emery; 25 years old; Boston, Mass.; medical student.

2. Were you ever employed in the apothecary store of John Berry, of Biddeford, Me.?

Ans. I was.

3. Up to what date, and for how long previous to that date?

Ans. I left him in December, 1881, the latter part; was with him the two years previous.

4. What were your duties while you were there these two years?

Ans. When I first went there, for a short time I was second clerk, and then I was head clerk the remainder of the time I was there.

5. Were you familiar with vessels and the apparatus of the shop during that time?

Ans. I was.

6. Was there a small room out of the main shop; and, if so, about how large was it?

Ans. There was, on the right-hand side as you enter the door, a very small room.

7. During the time you were there was there in that room a percolator made like Exhibit 10, now shown you, and used with the open end of the part with the little nibble in it downwards?

249 Ans. No, sir; there was not.

8. Was there an instrument of that kind in the main shop while you were there?

Ans. No, sir.

9. Was there an instrument like this Exhibit 10, more especially now, the lower part thereof having two perforated diaphragms with a rod like those now shown you as parts of Exhibit 10?

Ans. No, sir; there was not.

10. State what you had to do with the bottles and apparatus of the shop; how frequently you handled them for cleaning or other purposes while you were there.

Ans. I cleaned the store regularly every Monday morning, going in to do that about four o'clock. I manufactured tinctures while I was there, using the percolators, filters, and funnels, &c. I made no fluid extracts while I was there.

11. How many times per day should you say you were in this little room?

Ans. I wouldn't say definitely. I was in and out a great many times; perhaps twenty or thirty; some days more than that.

12. Was that room what was called the laboratory?

Ans. Yes; it was.

13. What kind, if any, of percolators were there in this laboratory?

Ans. There were two or three glass percolators of different sizes; a long tin percolator with a nose and stop-cock, and also an old tin concern, which I never used, but threw under the sink one day—that one over there (pointing to Exhibit 9).

14. How long was this long tin percolator, and for what was it used?

Ans. I won't state definitely how long nor its size. It was used principally for making bay rum and Jamaica ginger. It was somewhere about two or three feet long.

15. State briefly how it was used.

250 Ans. I generally suspended it by means of a hook from the side of a wall on the left-hand side of the so-called laboratory, the big end up; generally tied a string round it to keep it from jumping off the hook; and in making bay rum, for instance, I would put in a diaphragm across the bottom, turn in the menstruum, composed of diluted alcohol, oil of bay, a little tumeric, and a little senna for coloring; also for cracking it or clarifying a little sweet milk. We let it remain until it cracked or clarified; then would filter it into bottles or demijohns through filtering paper. Just before leaving we filtered it into a five-gallon keg, making that quantity without any stamp.

16. Did you or not draw the contents off by means of the stop-cock through the funnel-shaped end?

Ans. Yes, sir; as fast as it would filter.

16½. Did John Berry make any fluid extracts with the glass percolators while you were there?

Ans. He made one fluid extract of cotton root, I remember quite well, and tried others.

17. Was he successful in making fluid extracts by means of these glass percolators or did he make them to any great extent?

Ans. He was to a certain extent—the fluid extract precipitated and then had to be filtered over.

18. Did you ever see Exhibit 9 in use while you were in the shop?

Ans. No, sir.

19. Besides the big tin percolator to make bay rum, &c., in and Exhibit 9 was there any tin percolator, with or without a diaphragm, in the shop or laboratory while you were there?

Ans. Not to my recollection.

20. While you were there did you ever hear John Berry speak or talk about having on hand a percolator like this Exhibit 10?

Ans. No, sir; never.

251 21. Did you work in the shop awhile at the same time as Mr. Edwin U. Blackstone; and, if so, what was his position while you were there?

Ans. He was second clerk for something like a year.

22. Did you leave him there when you went away in December, 1881?

Ans. Yes, sir; I did.

23. Did you revisit Mr. Berry's store after you left his employ; if so, in what year?

Ans. I visited his store last summer.

24. At that time did you or not see the percolator, tube, and reservoir, Exhibit 10?

Ans. On his asking me back of his prescription counter I saw it hanging there, and that was the first time I had seen it or ever heard of it.

Cross-examination by Mr. LUNT:

X 25. How long were you engaged in the drug business from the time you first commenced, when did you leave it, and in what places were you employed?

Ans. About three years; I left Mr. Berry in December, 1881, just before Christmas. I was employed after that studying medicine at Bowdoin College one term. Leaving there I remained at home that summer, going from there to Concord, N. H., and remaining from October to the following April, 1883.

X 26. Where have you been employed as a druggist?

Ans. At Biddeford and Concord.

X 27. Did you first go to work as a druggist in Biddeford?

Ans. I did.

X 28. Were you first employed by Mr. John Berry?

Ans. I was.

X 29. What was your age at that time?

252 Ans. About twenty.

X 30. What had you been doing before your employment by Mr. Berry?

Ans. Farming.

X 31. Where?

Ans. In the country town of Elliot, Maine.

X 32. For how long a period had you been engaged in farming there?

Ans. I think about six years.

X 33. For whom?

Ans. My father.

X 34. Who first suggested to you that you engage in the drug business?

(Objected to as immaterial.)

Ans. Dr. C. J. Emery.

X 35. How long after he suggested did you engage in the drug business?

(Same objection.)

Ans. I think it was suggested in the fall, and I went to work soon after.

X 36. In what month of what year did you enter the employment of Mr. Berry?

Ans. That I can't say definitely.

X 37. In what year did you enter his employ?

Ans. I think either 1879 or 1880.

X 38. What time of the year?

Ans. I won't say fall or spring because I don't remember.

X 39. What persons were employed in the store of Mr. Berry when you first went into his service?

Ans. I think Charles Siegmond, Jr.; no one else.

X 40. How long after you went there did Mr. Siegmond remain?

Ans. Not a great many months.

X 41. What was Mr. Siegmond's position in the store?

Ans. Head clerk.

253 X 42. From whom, if any one, did you receive instructions in the business when you first went into Mr. Berry's store?

Ans. Both from Mr. Berry and Mr. Siegmond.

X 43. How long had you been in Mr. Berry's service before you became able to compound physicians' prescriptions?

Ans. I studied hard and was able in a few months.

X 44. Please state definitely.

Ans. I cannot.

X 45. Can you tell in what month and in what year you were first trusted to compound physicians' prescriptions?

(Objected to; immaterial.)

Ans. No, sir.

X 46. State what portion of the time while you were in Mr. Berry's service you compounded prescriptions.

Ans. That I won't say.

X 47. Can you answer the question as to what portion of the time you compounded prescriptions?

(Same objection.)

Ans. No, sir; I cannot.

X 48. Was there any other head clerk besides Mr. Siegmond in Mr. Berry's employ while you were there?

Ans. I don't see how there could be more than one, anyway.

X 49. Did Mr. Berry change his head clerks while you were there; if so, how many times?

Ans. He changed Mr. Siegmond and then changed me.

X 50. During the period while you were there did Mr. Berry employ as head clerk any persons besides Mr. Siegmond and yourself?

Ans. No, sir; he did not.

X 51. What other persons were in Mr. Berry's employ besides yourself and Siegmond during the period of your employment there?

Ans. No one.

(Respondent's counsel objects that the complainant in person is making signs to the witness.)

254 (Complainants' counsel, in justice to him, says that Mr. Rosenwasser pointed towards Mr. Edwin U. Blackstone, now

present waiting for examination, as if indicating that he came within the purview of the question, and that was all.)

X 52. What pay did you receive for your services while in Mr. Berry's employ?

(Same objection.)

Ans. I received none when I first went there, excepting my board. After Mr. Siegmond left I received a salary and board.

X 53. How much was your salary?

(Same objection.)

Ans. That I decline to answer, for his sake.

X 54. Were you discharged from his employment?

Ans. I left his employment to pursue the study of medicine, as my recommendation will show.

X 55. Were you accused of embezzlement while in his service?

(Objected to; improper.)

A. Never.

X 56. Didn't you have trouble with Mr. Berry about the time you left him?

(Same objection.)

Ans. A very little.

X 57. Wasn't it on account of that trouble that you left him?

(Same objection.)

Ans. Partially.

X 58. Do you remember the street number of Mr. Berry's store?

Ans. I do not.

X 59. Are there one or two windows in the store next the street?

Ans. Two.

X 60. How many counters in the store?

255 Ans. There were two counters, one on each side, and later he put one across the foot of the store.

X 61. When did he put the one across the foot of the store?

Ans. I cannot say.

X 62. How long before you left his service was it?

(Objected to; immaterial.)

Ans. That I cannot say.

X 63. Can't you tell whether it was three or six months before you left?

(Same objection.)

Ans. No, sir; I cannot.

X 64. How wide is the store in the front part?

Ans. I know not.

X 65. Give your best judgment.

Ans. I don't know anything in regard to the width of the store.

X 66. Was it or not about forty feet wide?

Ans. I told you once that I knew nothing about the width of the store.

X 67. According to your best judgment, please state whether or not the store was about forty feet wide.

Ans. That I cannot do.

X 68. Will you state whether or not the store was fifty feet wide?

Ans. I had no reasons for wanting to know it, and therefore I see no reasons why I should know it.

X 69. State, according to your best recollections, remembrance, and belief, if the store was fifty feet wide.

Ans. I don't know anything about it.

X 70. Please state your belief as to the width of that store.

Ans. I am no judge of the width of the store.

X 71. Would you say that the store was seventy-five feet wide?

256 Ans. That I can answer no to.

X 72. Was it sixty feet wide?

Ans. I don't know anything in regard to it.

X 73. Will you swear that it was any less than fifty feet wide?

Ans. I cannot swear to anything I know nothing about.

X 74. How, then, do you know that the store was not seventy-five feet wide?

Ans. Because seventy-five feet is quite a distance.

X 75. How deep was the store?

Ans. That I can't say either.

X 76. Was it or not about 200 feet deep?

Ans. I know not.

X 77. What, if anything, was there back of the store?

Ans. The Biddeford House was back of the store outside, and a looking-glass inside back of the store, and a window on each side of the looking-glass.

X 78. Will you swear that there were not four windows on the back part of the store?

Ans. I can.

X 79. Was the store wider at the back part than at the front part?

Ans. Yes, sir.

X 80. How much?

Ans. A number of feet.

X 81. Was it or not about fifteen feet wide?

Ans. Not so much as that.

X 82. About how much wider?

Ans. The width of the laboratory.

X 83. About how much was that?

Ans. Not more than four or five feet, I should say.

X 84. Are you willing to swear that the laboratory was not ten feet wide?

Ans. I wouldn't swear.

257 X 85. State whether or not the laboratory was about twenty feet long.

Ans. That I wouldn't state positively.

X 86. To the best of your remembrance and belief, was that laboratory about twenty-five feet long?

Ans. I should say not.

X 87. You have stated that the door of the laboratory was on the right hand of the store, as you entered. State whether or not it was half way from front to back of the store.

Ans. I should say very near half way.

X 88. Were there any show-cases on the counter on that side of the store?

Ans. Yes. A cigar show-case, and a pill, ointment, and salve case.

X 89. Where were the tinctures and fluid extracts kept?

Ans. The fluid extracts were kept in the rear of the shop, in a case by themselves. The tinctures were kept on shelves, principally on the right-hand side as you enter the door, a few being kept on the left.

X 90. What else was on the right hand of the store?

Ans. Drawers for keeping drugs and chemicals—principally drugs.

X 91. What was on the left-hand side of the store besides the counters?

Ans. Patent medicines and herb drawers, and little cupboards down underneath for keeping refuse boxes, &c.

X 92. Were there some show-cases on that side of the store also?

Ans. Yes, sir.

X 93. How many?

Ans. One long one and a short one.

X 94. Have you stated all the prominent objects in the store?

Ans. A deer's head over each window in the rear, provided
258 you mean the first floor—there was a cellar. There was a soda fountain.

X 95. Where was the soda fountain situated?

Ans. On the right hand on entering the door.

X 96. Was it or not the principal part of your duty to attend to the soda fountain and the selling of soda and cigars?

Ans. No, sir; it was not.

X 87. Can you now state when you were first trusted to put up prescriptions?

Ans. That I cannot say; it was only a short time.

X 98. You know Mr. Edwin U. Blackstone, do you?

Ans. I do.

X 99. When, during the present week, did you see him first, and where?

Ans. I saw him to-day, the 15th, at lawyer Clifford's office, he entering while I was there.

X 100. At whose request did you come here?

Ans. At request of Mr. Rosenwasser.

X 101. When did you first have an interview with him, and where?

Ans. Last night, about five minutes of seven, on the stoop of the house, 29 Bowdoin street, Boston, Mass.

X 102. What consideration did you receive for your attendance?

Ans. Merely my expenses.

X 103. You came very willingly, did you?

Ans. I did.

X 104. You still have a good deal of feeling against Mr. John Berry, have you not?

Ans. I have not. I would ask a favor from him as soon as from any one.

X 105. When was your attention first called to the subject of giving your testimony in behalf of Mr. Rosenwasser?

Ans. At five minutes of seven last night.

259 X 106. Had you received any communication from Mr. Blackstone previously concerning the matter?

Ans. No, sir.

X 107. After you came here to Portland where did you go first, and with whom?

Ans. I went immediately to Mr. Clifford's office after lunch, thence here, he not being at his office; took a walk uptown; came back to his office again and found him. Whilst uptown I called on Dr. Carter, who was not in. Mr. Rosenwasser was with me all the time.

X 108. What time did you leave Mr. Clifford's office after you saw him?

Ans. It was, I think, about ten minutes after two when we left there.

X 109. Where did you go from there?

Ans. Came directly here.

X 110. And have remained here since?

Ans. No, sir.

X 111. Where did you go from here?

Ans. I took a short walk with Dr. Emery to get a cigar and to talk about his wife.

X 112. Then did you return here directly?

Ans. After being stopped on the street by the marshal, he reading a warrant to Dr. Emery, I came directly here.

X 113. Have you now given a full account of your whereabouts since you came to Portland this time?

Ans. With one exception, which I forgot to mention—that is, I entered the Preble House to see if there were any traveling men there that I knew.

X 114. Do you dare to deny on oath that you visited W. F. Phillips & Co.'s store, Mr. Rosenwasser's selling agents here?

Ans. I entered his store and left my coat.

260 X 115. Is or not the Phillips store a very considerable distance down Middle street, away from the direction of the other places you have named as visited by you?

Ans. That was visited after we came here; then we took the walk that I have mentioned. Not being very well acquainted with the city of Portland, I can't say how far it is.

X 116. (Question repeated and a direct answer requested.)

Ans. Yes, sir; I should say it was.

X 117. Have you been accustomed to use ardent spirits as a beverage?

Ans. I will say that I have, but do not now.

X 118. How long since you abandoned the use of it?

Ans. Some two months or more.

X 119. How long did you have the habit upon you?

Ans. I began, I think, the second year I was with Mr. Berry—the first liquor I ever drank, and I followed it very lightly until two months ago.

X 120. Didn't Mr. Berry find fault with you on account of your habit?

Ans. He never mentioned it to me or said anything in regard to it in my presence.

X 121. Do you undertake to swear that you remember with distinctness all the various apparatus Mr. Berry had in his store for the purpose of making extracts or tinctures four years ago when you cannot remember without prompting the places you have visited within two hours of the beginning of this examination?

Ans. I can.

X 122. Do you now say that Mr. Berry did not have, to your knowledge, any tin percolating vessels similar to Exhibit 10, now shown you?

Ans. I can.

X 123. Do you testify that he did have a tin percolating vessel containing a diaphragm and with a beak to which was attached a stop-cock?

Ans. I do, but it was far different from that.

261 X 124. Where was the hook to which you have referred as being in the wall from which the tin percolator was suspended?

Ans. On the left-hand side of the laboratory door or entrance.

X 125. Do you mean on the door, or at the left of the door in the laboratory?

Ans. Not on the door, but at the left on entering said laboratory.

X 126. How far from the doorway or entrance to the laboratory?

Ans. I should say about half way back.

X 127. Was it about ten feet distant?

Ans. I cannot state positively.

X 128. Give your impression.

Ans. As I have said before, I am no judge of distance. The thing may have been changed since I was there.

X 129. Was it about half way from the door to the back end of the laboratory?

Ans. Yes, sir.

X 130. And was this hook attached to a projecting cornice of wood-work?

Ans. It was attached to the back of the wood-work—I should say a little more than my height from the floor—while I was there. I used to hang my coat and hat upon the same hook.

X 131. Were there any other hooks upon the walls or ceiling of the laboratory?

Ans. Yes, sir.

X 132. Was there a portion of the floor in the laboratory which was removable, thus making a hatchway opening into the cellar?

Ans. Not whilst I was there.

X 133. Will you swear that there was not a removable hatch about half way from the entrance to the laboratory to the back end thereof?

262 Ans. It wasn't half way. Come to think now, there was a hatchway just across the entrance of the laboratory door, where we used to lower the goods, and also take out the soda fountains after being charged.

X 134. Was not that hatchway within the laboratory?

Ans. I stated that it was across the entrance—inside.

X 135. Do you remember whether or not, upon the wall or cornice opposite to the entrance to the laboratory, there was a hook?

Ans. I think not.

X 136. Are you ready to swear positively that there was not?

Ans. Yes, sir; whilst I was there there was not, opposite the entrance.

X 137. Was there any projecting nail or wire in the cornice opposite the entrance to the laboratory upon which anything might be suspended?

Ans. There was a bracket there which held up a shelf, and on the left a little hook from which hung a little card with a glass over it, telling the different herbs in the drawers. That was on the cornice at the entrance, left hand.

X 138. Was the card suspended close to the cornice?

Ans. It hung against the cornice.

X 139. How high from the floor to the ceiling in that laboratory?

Ans. I couldn't say that.

X 140. Was it or not about twelve feet?

Ans. I wouldn't say positively. It might be more or less.

X 141. How wide was the cornice?

Ans. It may have been a foot and a half.

X 142. While you were there in Mr. Berry's employ were you absent from the store some portion of the time; and, if so, how much?

Ans. I was; I had a vacation of two weeks, and I was away a number of times two or three days.

263 X 143. Was Mr. Berry in the store at those times?

Ans. Yes, sir.

X 144. When did Mr. Blackstone come to work at the store first?

Ans. I wouldn't say positively, but it was just after he graduated from the high school there.

X 145. How long before you left?

Ans. I think somewhere in the neighborhood of a year.

X 146. Was he there when you left?

Ans. Yes, sir.

X 147. Can you swear that he was there six months while you were there?

Ans. I could not.

(Counsel for respondent here states that it is now after 6 p. m., that the day is done, and he declines to proceed further in this examination to-night.)

(Adjourned to May 16, 1884, 10 a. m.)

MAY 16, 1884.

(Counsel for complainants objects to the whole course of cross-examination as immaterial and intended for delay. This objection applies to X Ints. 31 to 147, inclusive.)

X 147½. You have stated that your habits of intoxication or your indulgence in the use of ardent spirits while with Mr. Berry were very light. Is it not the fact that on one occasion during the last year you were with Mr. Berry you became completely intoxicated and stupified so that Mr. Berry and Dr. C. J. Emery were obliged to render you medical aid?

(Objected to; immaterial.)

Ans. With tincture of opium, I did, sir; not with intoxicating liquor at all.

264 X 148. Is it the fact that you have indulged in the use of opiates?

(Same objection.)

Ans. No, sir; I have not.

X 149. While you were with Mr. Berry, about the time of your discharge from the service, is it or not true that you converted to your own use money and property of Mr. Berry's, outright?

(Same objection.)

Ans. No, sir; I did not.

X 150. Did you not on one occasion, about the time of your discharge, deliver up to Mr. Berry certain money in the presence of Mr. Blackstone?

(Same objection.)

Ans. I did, sir; but it was put under a book as a trap.

X 151. Where was the money when you were called upon to deliver it up?

Ans. I think I placed the dollar bill in the safe.

X 152. Was it in the safe when you were spoken to by Mr. Berry about it, or in your pocket?

(Same objection.)

Ans. The dollar bill that he placed under the book was in the safe.

X 153. Was there any other money?

(Same objection.)

Ans. The account in the book fell a dollar short. He generally kept $10 in the book for change.

X 154. What did Mr. Berry say to you when he called you to account, and who was present?

(Same objection.)

Ans. Mr. Berry said the book was $1 short. I think Mr. Blackstone was there.

X 155. Was that all he said to you?

(Same objection.)

Ans. I think it was at the time. Yes, sir.

265 X 156. What, if anything, did he say to you later concerning the disappearance of his money?

(Same objection.)

Ans. We had some talk in regard to it, and I made the amount good in the presence of Mr. Blackstone.

X 157. What was the talk, when, and where?

(Same objection.)

Ans. I have forgotten the conversation; it was in the back of the shop; the time I can't state positively.

X 158. He then accused you of having taken his money, and required you to make it good, did he?

(Same objection.)

Ans. He did not accuse me directly. I made it good of my own free will, and made a remark to Mr. Blackstone, too, in regard to it.

X 159. What was the substance of Mr. Berry's remark that led you to make your confession?

(Same objection.)

Ans. I made no confession whatever.

X 160. Will you state what was said between you then?

(Same objection.)

Ans. I wouldn't state positively, because I could not; it was so long ago.

X 161. Did not this unhappy occurrence make a strong impression upon your mind?

(Same objection.)

Ans. No, sir; it did not.

X 162. Didn't Mr. Berry discharge you immediately after?

(Same objection.)

Ans. No, sir; he did not.

X 163. Did you leave at that time?

(Same objection.)

Ans. I left of my own free will.

X 164. While you were with Mr. Berry did he send you on one occasion to the beach on business for him, and where-
266 upon you became intoxicated and did not appear until the next day?

(Same objection.)

Ans. He did so send me, and I did the business, got intoxicated, and returned that night. I did not go to the store, as it was my night off.

X 165. Did you, upon another occasion, come into his store upon an evening very much intoxicated, so that Mr. Berry sent for Dr. C. J. Emery to come over and take you away from the store?

(Same objection.)

Ans. Never, to my knowledge.

X 166. In whose employ were you, in Concord, N. H., since you left Mr. Berry?

(Same objection.)

Ans. H. D. Foster's.

X 167. When did you enter his service and when did you leave?

(Same objection.)

Ans. I entered his service, I think, in October, 1882, and I left there in the following April, 1883, I think.

X 168. Did you not have some trouble with Mr. Foster in regard to money matters before you left?

(Same objection.)

Ans. I did.

X 169. Did you have the same kind of an episode with Mr. Foster as you did with Mr. Berry?

(Same objection.)

Ans. No, sir; far different.

X 170. Did Mr. Foster accuse you of taking his money?

(Same objection.)

Ans. Never.

X 171. He discharged you, did he not?

(Same objection.)

Ans. No, sir.

267 X 172. Was the money which Mr. Berry demanded of you a marked bill, and did you take it out of your porte-monnaie and pass it to him?

Ans. He claimed at the time that it was a marked bill, and he paid me off that night. I took the bill from the amount he paid me.

Redirect by Mr. CLIFFORD:

R. D. 173. Did Mr. Berry know where you were and where you had been studying medicine last?

Ans. I think he did, through Dr. Emery.

R. D. 174. Did he or not, when you left his employ, give you a recommendation for character and competency?

Ans. He did, sir.

R. D. 175 (*de bene esse*). Some questions have been put to you in the attempt to cast the slander upon you of taking money from Berry, your employer. Is there any foundation for it?

(Objected to; not calling for facts, but matter of opinion.)

Ans. No, sir; there is not.

WM. E. EMERY.

Attest: A. H. DAVIS, *Examiner.*

PORTLAND, *May* 16, 1884.

Present: Wm. Henry Clifford, counsel for complainants; Wilbur F. Lunt, counsel for respondent.

Deposition of Edwin U. Blackstone.

Direct examination by Mr. CLIFFORD:

Int. 1. What is your name, age, residence, and occupation?

268 Ans. Edwin U. Blackstone; 21 years old; Biddeford, Me.; not employed at present.

2. Were you ever in the employ of John Berry in his apothecary store in Biddeford, Me.?

Ans. I was.

3. When did your employment begin and how long were you there?

Ans. I was engaged in June, 1881, and remained there until April, 1884.

4. What were your duties when you first went there?

Ans. I was junior clerk.

5. Who was employed as head clerk while you were junior?

Ans. William Emery.

6. The person who was on the stand here before you?

Ans. Yes, sir.

7. How long were you two in Berry's store together?

Ans. From the 1st of July, 1881, till the last of December, the same year.

8. What were your duties after Emery left?

Ans. I was clerk—the only one there for a few months—employed in manufacturing tinctures and medicinal preparations and keeping the store in order.

9. What is the name of the street on which the store is situated?

Ans. Main street.

10. Were you familiar with the bottles, glasses, and vessels which were used in that store while you were there?

Ans. I was.

11. Did you or not have charge of them, to cleanse and keep them in order?

Ans. I did.

12. Prior to the year 1882 was there an apparatus like Exhibit 10, the one now shown you, or was this identical apparatus used for percolation or for any purpose in that store?

Ans. It was not in use.

269 13. Was it in the store at all before 1882?

Ans. I don't remember it.

14. Do you remember the room at the right hand as you enter the store?

Ans. I do.

15. Was there any such a machine or apparatus in that room during the year 1881?

Ans. No, sir; not of that structure.

16. How frequently were you in the room every day?

Ans. I was in and out every few minutes.

17. Were there glass percolators in this side room?

Ans. Yes, sir.

18. Was percolating carried on in those?

Ans. Yes, sir.

19. Do you remember a large tin digester or percolator, used for making bay rum, in the side room?

Ans. I do.

20. About how large was that?

Ans. I should estimate from two and one-half to three feet in height and about eight inches in diameter.

21. Describe briefly how it was made, more especially the bottom, and give the general shape.

Ans. At the bottom it was conically shaped, having in the lower extremity a faucet.

22. When anything was made in this vessel through what was it drawn off?

Ans. Through a faucet into a funnel containing a filter and filter rack.

23. Was it open at the upper end?

Ans. It was.

24. Now, please state briefly how articles were put into it and how it was used.

Ans. It was used principally for making bay rum, Jamaica ginger, and, I think, fluid extract of sarsaparilla one or twice. There was a diaphragm over the conical structure on which was

270 packed the Jamaica ginger and herbs for percolating, the menstruum being poured on the top of the drug, pouring down through and thus forming the tincture or fluid extract.

25. There was no reservoir employed with it like this Exhibit 10, was there?

Ans. No, sir.

26. Was or not this the only tin percolator in use in that room up to the beginning of the year 1882?

Ans. Yes, sir; while I was in the store.

27. How many glass percolators were there?

Ans. There were two or three.

28. Were you absent from the store any between July and the latter part of December, 1881?

Ans. I don't remember of being absent.

29. During this time, in 1881, did you ever hear Berry speak of or describe a percolator like Exhibit 10 as one of his own invention?

Ans. No, sir.

30. Berry, the defendant, has testified that in this percolator he had two perforated diaphragms with a screw rod, such as I now show you. Was there anything of that kind in the store or side room in 1881 while you were there?

Ans. No, sir.

31. Did you ever see Exhibit 9 before yesterday; if so, where?

Ans. Yes, sir; I have seen it in Mr. Berry's shop or one similar to it; it may be the same one.

32. Did you ever see it used?

Ans. No, sir.

33. Where was it kept?

Ans. It was up on the shelf, and then it was underneath the sink for a spell.

34. Were you in Berry's employment while he was in here giving his evidence in this case?

Ans. I was.

271 35. Did you ever see this device, Exhibit 10, before yesterday, or one like it, in the shop of John Berry?

Ans. Yes, sir.

36. Who brought it into the shop?

Ans. Mr. Berry.

37. When was that?

Ans. That was some time, I think, in the spring of 1882—after Mr. Emery had left.

38. Was this little nibble on the top of the percolator when it was first brought in?

Ans. It was put on, I think, as an experiment afterwards.

39. How soon afterwards, as near as you can state?

Ans. It might have been one month, or it might have been six, or it might have been a week afterwards; I could not tell.

40. Was there a bail with these ears on this reservoir when it was first brought in?

Ans. I don't remember.

41. Was this screw-cap on the flat top of the reservoir when it was first brought in?

Ans. I don't know whether it was on then or put on afterwards.

42. Were or not the bail and the screw cap either on at the time you first saw the reservoir or afterwards put on?

Ans. I could not state.

43. Was this handle on the reservoir when you first saw it?

Ans. Yes, sir.

44. Was this device, Exhibit 10, hung up in the shop that spring and operated?

Ans. Yes, sir.

45. Whereabouts?

Ans. In the laboratory.

46. State particularly what part of the room.

Ans. The reservoir was suspended from the ceiling at about the center of the laboratory.

47. Where was the percolator placed?

272 Ans. Directly underneath, on a bench.

48. Was the percolator provided with this conical bottom when it was first brought into the shop?

Ans. Yes, sir.

49. How many perforated diaphragms were there accompanying the percolator when you first saw it?

Ans. One set, consisting of two diaphragms.

50. Do the two diaphragms and rod, which I now show you, look like the ones?

Ans. They look very similar.

51. Is it not your opinion that those are the ones?

Ans. They look near enough to them to be the same ones, although I could not state that they were.

52. Did the first rod have two threads running different ways or the thread running one way only?

Ans. One way only.

53. What was this first used for—what was made in it?

Ans. I don't remember.

54. Did it work successfully?

Ans. It seemed to.

55. Was it kept in the shop after the spring of 1882 and used continuously?

Ans. Yes, sir.

56. How many times or how frequently do you think it was in use?

Ans. It was used nearly every day down to the time I left.

57. Did the percolator always remain in the same place in the laboratory—I mean when used?

Ans. It was moved round in different places.

58. Was the screw-rod with the two differently running threads adopted while you were there; and, if so, when, as nearly as you can remember?

Ans. It was adopted some time after the percolator was in running order; I can't say exactly when.

273 59. Did you ever see the iron diaphragm which I now show you before yesterday or to-day?

Ans. I have seen that one or one similar; don't remember when I saw it first.

60. Did you ever see the tin diaphragm before which I now show you, which has a handle made of a piece of tin with holes in it finer than the holes in the diaphragm?

Ans. Yes, sir; but I don't remember at what time I did see it first.

61. Was it ever used, to your knowledge, in the shop with the percolator, Exhibit 10?

Ans. I could not certify that it was or was not.

62. Was the tin diaphragm which is in the percolator, and which you observe has got no hole for the screw rod, ever used in this percolator while you were there?

Ans. I do not remember.

63. According to your recollection, were there any diaphragms used except in connection with a screw rod of some kind, in the spring of 1882, and afterwards?

Ans. I did not see them used.

(Intermission, 1 to 2.45 p. m.)

3.15 P. M.

Cross-examination by WILBUR F. LUNT, counsel for respondent:

X 64. When did you leave Mr. Berry's employ?

Ans. On the first of April, 1884.

X 65. Did you have any unpleasantness which caused you to leave?

Ans. I left on account of disagreement between us.

274 X 66. What was the nature of the disagreement?

Ans. The principal thing was on account of wages that I thought I ought to have.

X 67. Did Mr. Berry visit your boarding place prior to your leaving?

(Objected to as immaterial.)

Ans. No, he did not, that I know of

X 68. Did Mr. Berry accuse you of abstracting merchandise from the store?

(Same objection.)

Ans. He did.

X 69. Did you confess that you had done so?

(Same objection.)

Ans. I confessed nothing.

X 70. Among other things, did you take from the store and secrete at your home a quantity of cigars?

(Objected to as before. Counsel instructs the witness that he need not answer unless he wishes to.)

Ans. I decline to answer.

X 71. Why do you decline to answer the question?

Ans. Because I think it has nothing to do with the subject, and by the instruction of Mr. Clifford.

X 72. Is that all the reason you can give for not answering that question?

Ans. It is all.

X 73. Do you refuse to answer on the ground that the answer would criminate you?

Ans. I do not.

X 74. State whether or not you confessed to Mr. Berry that a quantity of cigars which you had taken from the store without his permission or knowledge was at your father's house, and afterwards your father returned them to Mr. Berry—or you returned them in the presence of your father.

(Objected to; immaterial and improper.)

275 Ans. They were at my father's house and I gave them to Mr. Berry in my father's presence.

X 75. When was that?

(Same objection.)

Ans. About the first of April.

X 76. Upon that Mr. Berry discharged you, did he not?

(Same objection.)

Ans. He did not.

X 77. Didn't Mr. Berry take the keys from you then?

(Same objection.)

Ans. I delivered them up to him the Saturday before that.

X 78. Did he request you to do so?

(Same objection.)

Ans. He did not.

X 79. What day of the week was it that you returned the cigars?

(Same objection.)

Ans. Tuesday morning.

X 80. When did you have the talk with Mr. Berry that led to the delivery of the cigars?

(Same objection.)

Ans. The same morning.

X 81. Where?

(Same objection.)

Ans. In the Biddeford House.

X 82. He then charged you with pilfering, did he not?

(Same objection.)

Ans. He did.

X 83. You admitted that you had taken some things, did you not?

(Same objection.)

Ans. I did not.

X 84. What did Mr. Berry say to you that Saturday morning at the Biddeford House prior to the Tuesday when you left?

276 (Same objection.)

Ans. He did not say anything to me Saturday morning before I left.

X 85. What did he — the Tuesday morning following at the Biddeford House?

(Same objection.)

Ans. I cannot enumerate what he said that morning, as I was going to take the morning train for Boston and was in a hurry and didn't pay much attention to it.

X 86. Didn't you, on the Saturday when you gave up your keys, upon the assertion of Mr. Berry that you had taken cigars from the store, deny it, and afterwards, on Tuesday following, admit that you had and offer to ride to the depot in Mr. Berry's team with him and get the cigars?

(Same objection.)

Ans. I denied it at some time, for the reason that I thought that he had always trusted me and had given me that privilege, but that if he thought or had any suspicion that I was guilty of taking cigars or the box full without paying for them I thought it was an improper question, as he had never had any cause to mistrust me. I denied that I took them. I had always previously taken what I wanted and paid for them as I pleased. He never had asked me if I had paid or had not paid for anything I had taken, and, as I was under his employ on that day, I considered that I had the same privilege I had always had without telling him of every trade I might have made.

X 87. Did you charge yourself with any cigars on the books?

(Same objection.)

Ans. I charged myself on a book that I always carried in my own pocket with the balance of the cigars.

X 88. Did you carry away from the store without Mr. Berry's knowledge or consent some other merchandise?

(Same objection.)

277 Ans. I did not.

X 89. You didn't charge the goods you took for your own use or carried away upon Berry's books, then?

(Same objection.)

Ans. I did not, as a general thing.

X 90. Did you exhibit your book upon which you made these charges to Mr. Berry, and did he have knowledge of its contents?

(Same objection.)

Ans. I did not, although he told me to settle my own account, which I did.

X 91. In any of your settlements with Mr. Berry was your private book mentioned?

(Same objection.)

Ans. It was not.

X 92. When Mr. Berry discovered what you had been doing you discovered that your pay was not sufficient, did you?

(Same objection.)

Ans. I did not. I had spoken to him about raising my pay a year before or more.

X 93. It was at the time he discovered your operations that your engagement with him was closed, was it not?

(Same objection.)

Ans. No, sir.

X 94. How long after he discovered your operations was it before your engagement with him was closed?

(Same objection.)

Ans. I could not tell. He had made considerable cheap talk behind my back about my conduct outside of the shop for some months previous to the time I left, which talk had always come to my face, and that was his evidence against me at our first talk.

X 95. Was it not the fact that you were out nights and that your father came to Mr. Berry to inquire about your habits and whereabouts?

278 (Same objection.)

Ans. I did not always go directly home after I left the shop evenings, and my father never mentioned to me that he had ever made any talk with Mr. Berry concerning my whereabouts.

X 96. As a matter of fact you and Mr. Berry had considerable trouble, did you not, while you were with him?

(Same objection.)

Ans. No, sir; but very little trouble.

X 97. Didn't you have considerable many words with him, and did he not often reprimand you as to your conduct?

Ans. He has given me advice—good advice, as he termed it—very frequently concerning my conduct.

X 98. Did you take that kindly?

(Same objection.)

Ans. I did not heed it—pay much attention to it—as my time outside of business hours was my own.

X 99. What time did you leave the store at night?

(Same objection.)

Ans. About ten o'clock—my nights on.

X 100. Was it not on Saturday, prior to the Tuesday which you have mentioned, about the 1st of April, 1884, that Mr. Berry took away from you the keys?

(Same objection.)

Ans. It was.

X 101. Did he settle with you that day?

(Same objection.)

Ans. He did not.

X 102. Did he settle with you on either of the following days up to and including Tuesday?

(Same objection.)

Ans. He did not.

X 103. Have you since had any settlement with him?

(Same objection.)

Ans. I have.

X 104. How recently?

279 (Same objection.)

Ans. Some three weeks ago, I should say.

X 105. When did you first meet Mr. Nathan Rosenwasser, the complainant, and where?

Ans. Last Wednesday, in Biddeford, Me.

X 106. Where in Biddeford?

Ans. He called at my house to see me.

X 107. Did he then have a conversation with you concerning Mr. Berry's percolator?

Ans. He did.

X 108. Did you, in that conversation, tell him of Mr. William E. Emery, and where he could be found?

Ans. He asked me where he could be found, and I told him he lived in Kittery.

X 109. Was that the last time you saw him previous to your coming here?

Ans. It was.

X 110. Did he then agree to pay you a sum of money more than the fees provided by law if you would testify for him in this case?

Ans. No, sir; the money question was not mentioned at all.

X 111. Didn't you tell Mr. John Berry, at the Eastern R. R. depot in Biddeford, yesterday forenoon that Mr. Rosenwasser promised to pay you $5 if you would testify in his behalf, or words to that effect?

Ans. No, sir; I did not.

X 112. Didn't you say to Mr. Berry, at the time and place last mentioned, that Mr. Rosenwasser wanted you to testify that Mr. Berry used his percolator (here shown as Exhibit 10) at his (Berry's) house, and that you replied that you could not, because it was at the store when you went there?

Ans. I did not.

X 113. Previous to your being sworn here have you had questions put to you in the presence of Mr. Emery concerning the matter as to which you were to testify?

280 Ans. I did.

X 114. And were questions put to him on the same occasion?

Ans. They were.

X 115. And you talked over with him and others the answers which you were to give to the questions, did you not?

Ans. I made no talk with Emery, and, being asked by Mr. Clifford what I knew about the percolator, I told him exactly as I knew.

X 116. Did you not talk over the matter yesterday forenoon, on the train, with Rosenwasser and Emery?

Ans. I did not.

X 117. Did you talk with Mr. Rosenwasser yesterday concerning your answers in this case?

Ans. I do not remember that he asked me a question concerning this case. I did not talk with Mr. Rosenwasser concerning this case.

X 118. Look at the percolating vessel, Exhibit 10, and notice the marks opposite each other on the inside of it. Do you have any knowledge or information as to how those marks came there?

Ans. I think that the diaphragm did not hook in securely only one way, and I think that is what they were marked for.

X 119. Will you please explain how those marks on there had anything to do with holding in the diaphragm?

(Marks shown to witness.)

Ans. Making a mistake in the marks, and looking at the marks I am now directed to look at, I do not know how they came there.

X 120. Were those marks which I show you, having the appearance of solder near the mouth of the percolating vessel, Exhibit 10, there when you first saw it?

Ans. I do not remember whether they were or not.

X 121. Will you swear that they were or not?

Ans. I will not.

281 X 122. Do you know whether or not the percolating device, Exhibit 10, had been used before you saw it?

Ans. I do not.

X 123. When you say Mr. Berry brought it into the store, where did he bring it from?

Ans. I do not know.

X 124. Do you know that Mr. Berry did not have in his possession Exhibit 10 long prior to the time when you were engaged in his service?

Ans. I do not.

X 125. Don't you know that those two diaphragms which you have in your hand, and which counsel exhibited to you on your direct examination, were in Mr. Berry's store when you went there?

Ans. I do not.

X 126. Will you swear they were not there at that time?

Ans. I will not.

X 127. Was this diaphragm with a handle on the back of it in the store when you went there?

Ans. I do not remember of seeing it.

X 128. Didn't Mr. Berry explain to you that years before he used this percolator with the diaphragms supported by sticks or cross-bars (referring to Exhibit 10)?

(Objected to; incompetent.)

Ans. I do not remember that he ever showed me that percolator used in that condition. I do not think he did.

X 129. Will you swear that Mr. Berry did not tell you while you saw the percolator (Exhibit 10) in his store that he formerly used it with the diaphragms supported by sticks resting against bosses or little studs on each of the inner sides of the cylinder?

(Same objection.)

Ans. He told me that he had used percolators, whether tin or glass I cannot state, with two diaphragms supported in the manner that counsel speaks of—with wedges.

282 X 130. Was it or not so stated to you by Mr. Berry when or about the time you first came into his store?

(Same objection.)

Ans. I do not remember when it was stated to me.

X 131. Was it not stated in a conversation concerning this percolator, Exhibit 10?

(Same objection.)

Ans. I don't remember that it was.

X 132. The percolator which you have said Mr. Berry brought into the store you used, did you not?

Ans. I do not remember that I have used that same percolator, but think I have.

X 133. What became of that percolator?

Ans. I do not know.

X 134. When did you last see it?

Ans. I cannot remember.

X 135. Then this percolator (Exhibit 10) is not the percolator which you stated in your direct examination that Mr. Berry brought into the store for the first time in your knowledge in 1882, is it?

Ans. I do not know, but it looks very similar to the same one.

X 136. When did you last see the one which he brought in?

Ans. I do not remember.

X 137. Did you box up to send to Portland this percolator (Exhibit 10)?

Ans. I do not remember that I did.

X 138. Did you box up any percolator of this size to send to Portland while in Mr. Berry's employ?

Ans. I do not remember of ever boxing up any percolators.

X 139. Did you use this percolator (Exhibit 10) yourself, as you have stated in your direct examination, continuously from 1882 up to the time when you left Mr. Berry?

(Objected to; witness has not so stated.)

283 Ans. I don't know that I used this one in particular, but have used one very nearly like it.

X 140. In answer to direct int. 56, as follows: "How many times or how frequently do you think it was in use?" you replied: "It was used nearly every day down to the time I left." Was it this percolator (Exhibit 10) that you referred to as being so used?

Ans. I think it was, but am not certain.

X 141. Do you not recall the fact, upon reflection, that you have made a great mistake in referring to the percolating devices, and that this Exhibit 10 was not in use at all for months before you left Mr. Berry, and was not in the store?

Ans. I do not think I said it was used up to the time I left. It was used, in the first place, to experiment with, and, as I think, the first percolator used before me. It was soon changed for a new one.

(Counsel hands witness the record of a portion of his testimony before the examiner, and calls his attention to int. 56 and his answer thereto.)

X 142. Now, sir, have you not sworn incorrectly in your answer to that interrogatory?

Ans. I do not think I did; I do not think I said up to the time I left.

X 143. Then your answer to that question is untrue as it is recorded, is it?

Ans. It is as it is recorded.

X 144. Do you retract your answers to any other questions in your direct examination?

Ans. I do not.

X 145. Is it or not true that you have not seen Exhibit 10 until yesterday, either in Mr. Berry's store or elsewhere, for six months at least?

Ans. I think it is; I do not remember having seen it.

X 146. When did you first miss it from the store?

Ans. I don't remember how long ago.

284 X 147. Do you know William Moran?

Ans. I do.

X 148. Was he a clerk with you in Mr. Berry's store?

Ans. He was.

X 149. Do you not recall the fact that one morning in November, 1883, you and Mr. Moran packed up this percolating device—Exhibit 10 and Exhibit 9—and the diaphragms here shown to be

shipped to Portland for use in this case, and that you did the same in Mr. Berry's store?

(Objected to; immaterial.)

Ans. I do not remember that I did.

X 150. Will you swear that you didn't?

(Same objection.)

Ans. I will not.

X 151. Do you remember when William Moran came into the store to work?

Ans. I do not.

X 152. Was it or not about a year ago this time, May, 1883.

Ans. I do not remember.

X 153. Did you give Mr. Moran instructions how to assist you in percolating?

(Objected to; immaterial.)

Ans. I think I have.

X 154. Did you, in Mr. Berry's store, in Biddeford, about the 15th of June, 1883, tell William Moran, referring to the percolating device, Exhibit 10, that it was in the store when you came there?

Ans. No, sir.

X 155. Have you stated to any other person that this percolator (Exhibit 10) was in the store when you went there?

(Objected to; improper.)

Ans. No, sir.

X 156. Do you remember seeing a rod like that (a single-threaded rod shown to witness)?

285 (Objected to; said rod not in the case.)

Ans. I have seen one like it.

X 157. Was it in use when you saw it?

(Same objection.)

Ans. I have seen it in use.

X 158. Who was present when it was in use?

(Same objection.)

Ans. I do not remember.

X 159. Did you state in the presence of Dr. C. J. Emery, in Mr. Berry's store, in Biddeford, about the 1st of November, 1883, that this percolating device (Exhibit 10) was used by Berry before you went into his employ?

Ans. I did not.

X 160. Was there any percolator in Mr. Berry's laboratory when you first went into his employ with which a rubber tube was used to conduct the menstruum into a percolating vessel?

Ans. No, sir.

X 161. Is your answer to int. 26, now shown you, true or correctly taken?

(Respondent's counsel objects to complainants' counsel prompting the witness and interfering.)

Ans. It is.

(Counsel for complainants states he was not interfering with or prompting, and denies the imputation.)

Redirect by Mr. CLIFFORD:

R. D. 162. Several questions have been put to you imputing a charge that you dishonestly took from Berry cigars and certain other property. Is there any truth in the accusation?

Ans. No truth in the statement that I did it dishonestly.

EDWIN U. BLACKSTONE.

Attest: A. H. DAVIS, *Examiner.*

286 *Evidence for Respondent in Surrebuttal.*

PORTLAND, *May* 19, 1884.

Present: Wilbur F. Lunt, counsel for respondent; Wm. Henry Clifford, counsel for complainants.

Deposition of William Moran.

Direct examination by Mr. LUNT:

Int. 1. What is your name, age, residence, and occupation?

Ans. William Moran; 22 years old; Biddeford, Maine; clerk.

2. Are you now in the employ of John Berry, apothecary, of Biddeford; and, if so, how long have you been there?

Ans. Yes, sir; for about two years ending this month.

3. Do you know Edwin U. Blackstone; and, if so, was he in Mr. Berry's employ when you went there, in his apothecary store?

Ans. Yes, sir.

4. (Exhibit 10 shown witness.) Have you ever seen this device, Respondent's Exhibit 10, with these diaphragms accompanying it?

(Objected to; not surrebuttal and cumulative.)

Ans. Yes, sir.

5. When did you first see the device marked Exhibit 10, reservoir and percolating vessel, and where?

(Same objection.)

Ans. When I first went to work for Mr. Berry; in his store, in the back laboratory, hanging up.

287 6. Did you at that time have any conversation with Mr. Edwin U. Blackstone concerning it?

(Same objection.)

Ans. Yes, sir.

7. Did he describe to you the different ways of using it?

(Same objection.)

Ans. Yes, sir; he did.

8. How long was this after you first went into the store?

(Same objection.)

Ans. Probably a few days.

9. You see these two diaphragms upon a rod double-threaded, one diaphragm having hooks upon it. Was the percolator used with those diaphragms and rod when you first saw it?

(Same objection.)

Ans. Yes, sir.

10. When last before to-day did you see this device, Exhibit 10, with the rod and diaphragms, and where?

(Same objection.)

Ans. In John Berry's store last fall, when Mr. Berry was testifying here.

11. Was Edwin U. Blackstone then a clerk in Berry's store?

(Same objection.)

A. Yes, sir; he was.

12. State where in the store it was when your attention was called to it last fall.

(Same objection.)

Ans. Placed up back upon a high shelf in the laboratory, over the cellar door.

13. Had it been recently used in the store at that time, or had it been upon the shelf a long time?

(Same objection.)

Ans. It had been upon the shelf a long time.

14. Did you do anything with it or assist any other person
288 in doing anything with it last November in the store? If so, state what was done by you with the device, and who assisted, if anybody.

(Same objection.)

Ans. I helped to take it down, packed it in a box, assisted by Edwin Blackstone.

15. Do you mean assisted by Edwin U. Blackstone, Mr. Berry's clerk?

(Same objection.)

Ans. Yes, sir.

16. What did you and Mr. Blackstone do with it after it was packed?

(Same objection.)

Ans. The cover was put on, a tag nailed on the cover, and it was sent to Portland.

17. Has it been in Mr. Berry's store since?

(Same objection.)

Ans. I have not seen it.

18. Have you been there every day?

(Same objection.)

Ans. Most of the time, except in case of sickness or having to go somewhere. I don't think I have been a week out of the store since then.

19. Do you know whether Mr. Edwin U. Blackstone, who assisted you, was discharged by Mr. Berry about the first of April last?

(Same objection, and incompetent.)

Ans. Yes, sir.

20. Was he?

(Same objection.)

Ans. Yes, sir; he was.

21. When you first saw this device, Exhibit 10, was it bright and new looking?

(Same objection.)

Ans. No, sir.

289 22. Describe, as nearly as you can, the appearance of it.

(Same objection.)

Ans. It was old looking and showed it had been used a long time before.

(Answer objected to; witness reasoning.)

23. Did Mr. Blackstone tell you how the diaphragms had ever been supported in it?

(Same objection.)

Ans. Yes, sir.

24. What did he tell you?

(Same objection.)

Ans. He told me the first diaphragm was placed in, then the drug was placed in, and the next diaphragm was placed on top of the drug. Sticks were placed in against the top diaphragm to hold them in place. That was the way it was used—the first time he was telling me. That was before the rod was used. He didn't say that he had used it that way, to my knowledge.

25. Do you mean that he told you that when the percolator was first used the diaphragm was supported by sticks as braces?

(Same objection, and attempting to lead the witness into forms of expression not his own.)

Ans. Yes, sir; he told me several times that that was the way it was used.

26. How were the diaphragms supported when you first saw Exhibit 10 used?

(Same objection as to int. 18.)

Ans. With a rod.

Cross-examination by Mr. CLIFFORD:

X 27 (*de bene esse*). When did your employer, Mr. Berry, tell you he wanted you to come in here and testify?

Ans. Saturday last.

290 X 28. Upon what points did he say he wanted you to testify?

Ans. Well, none in particular.

X 29. Did he ask you about the packing up of the Exhibit 10, if you remembered it?

(Objected to as inadmissible.)

Ans. Yes, sir; he did.

X 30. Did he ask you if you remembered about packing it together with Blackstone?

(Same objection.)

Ans. Yes.

X 31. Did he ask you if you remembered about its having been upon a shelf for some time before that?

Ans. Yes, sir; he did.

X 32. Did he ask you if you remembered that it was last November or somewhere about that time?

(Same objection.)

Ans. He asked me if I could remember about what time it was sent here, and I said I could.

X 33. Was November mentioned?

(Same objection.)

Ans. Yes, sir; it was.

X 34. Did he ask you if you remembered the putting on of the tag, the direction of the box, and where it was sent?

(Same objection.)

Ans. Yes, sir.

X 35. How did you know that Mr. Berry was testifying here at that time?

(Same objection.)

Ans. I supposed it was about as long as last November that he was in here.

X 36. Did Mr. Berry tell you that he was testifying in here at that time?

Ans. I knew that he was at the time testifying here.

X 37. (Question repeated.)

291 (Same objection.)

Ans. I told him I thought I could remember that it was about that time; he didn't simply tell me that it was at that time.

X 38. Now state whether or not Mr. Berry told you that he was in Portland testifying at that time.

(Same objection.)

Ans. He told me last November several times that he was in here testifying. Every night that he came out I knew that he was in here.

X 39. Now state what was said last Saturday about his being in here to testify last November.

(Same objection.)

Ans. He asked me if I thought I could remember how long ago it was. I told him I thought I could.

X 40. Did he ask you if you could remember that it was last November?

(Same objection.)

Ans. I told him I thought it was about that time.

X 41. (Question repeated.)

(Same objection.)

Ans. Yes, sir; he did ask me if I thought it was last November.

X 42. Did he tell you that Blackstone had testified that he could not remember of packing up Exhibit 10 with you and sending it to Portland?

(Same objection.)

Ans. Yes, sir; he told me so.

X 43. And he wanted you to testify in order to show that Blackstone had not told the truth, did he not?

(Same objection.)

Ans. Yes, sir; because I knew that he was not telling the truth.

X 44. Did Berry say that Blackstone had testified to a falsehood?

(Same objection.)

292 Ans. He told me what he had testified, and asked me what I thought about it.

X 45. Did he say it was a falsehood?

(Same objection.)

Ans. Yes, sir.

X 46. And he wanted you to come in and prove it, did he not?

(Same objection.)

Ans. He asked me to come in and answer what questions were asked me.

X 47. Did he or not ask you to come in to show that Blackstone's testimony about the box, &c., was falsehood?

(Same objection.)

Ans. He asked me if I thought I could remember at the time—if I knew that Blackstone was telling a falsehood.

X 48. At what time did this conversation take place?

(Same objection.)

Ans. Saturday.

X 49. Evening?

(Same objection.)

Ans. Several times though the day; we kept busy; didn't hold any private conversation through the day.

X 50. In the shop?

(Same objection.)

Ans. Yes, sir.

X 51. Did you refer to the subject a half dozen times, do you think?

(Same objection.)

Ans. No; not so many times as that.

X 52. Is Berry somewhat irritated against Blackstone?

(Same objection.)

Ans. He was, some.

X 53. Did he call him any hard names?

(Same objection.)

Ans. No, sir.

293 X 54. When did you learn that Blackstone was discharged?

(Same objection.)

Ans. One Saturday night.

X 55. Who told you?

(Same objection.)

Ans. Mr. Berry.

X 56. Can you positively swear that when Blackstone told you about the sticks that were used to hold up the diaphragm he did not say that was the way Berry said he had used it?

(Same objection.)

Ane. Yes, sir; he did.

X 57. Have you not yourself also heard Mr. Berry say that he used sticks?

(Same objection.)

Ans. Yes, sir.

X 58. Mr. Blackstone had only known and used the diaphragm with the rod, had he?

(Same objection.)

Ans. He had known that the others were used, but he had only used the rod.

X 59. And he had learned the use of the others from Berry?

(Same objection.)

Ans. Yes, sir.

X 60. Did Mr. Berry inform you that this Exhibit 10 had been up on the shelf for a long time before it was sent to Portland?

(Same objection.)

Ans. I knew it had been up there; I had seen it most every day.

X 61. How could you tell that it was the same one if you were not informed?

(Same objection.)

Ans. I could tell it—I had seen it so many times—wherever I saw it.

294 X 62. Did Mr. Berry inform you that he had testified concerning this exhibit when he came into Portland last winter?

(Same objection.)

Ans. Yes, sir; he did.

X 63. Were you summoned?

(Same objection.)

Ans. No, sir.

X 64. How long was this exhibit put up onto the top shelf?

(Same objection.)

Ans. Some length of time.

X 65. Do you remember when Mr. Berry was sued in this case?

(Same objection.)

Ans. Yes, sir.

X 66. Was the exhibit put away about that time?

(Same objection.)

Ans. I can't remember.

X 67. Was the rubber tube on it when you packed it up?

(Same objection.)

Ans. No, sir; I don't think it was.

X 68. Who put it on?

(Same objection.)

Ans. I don't remember.

X 69. Was the rubber tube put on preparatory to sending it into Portland?

(Same objection.)

Ans. I don't remember.

X 70. Was the tube on while it was lying up on the shelf?

(Same objection.)

Ans. I think not.

X 71. Don't you remember of Mr. Berry's getting a piece of tube and fitting it onto these two parts before it came to Portland?

295 (Same objection.)

Ans. No, sir.

X 72. Can't you remember whether it was on when you packed it or not?

(Same objection.)

Ans. I don't remember.

X 73. What do you think; that it was or was not?

(Same objection.)

Ans. I don't remember whether it was on or off.

X 74. What do you think?

(Same objection.)

Ans. I don't know as it was; I can't say.

X 75. Did you ever see that diaphragm with the handle on it before the time you packed up this model?

(Same objection.)

Ans. Yes, sir.

X 76. Where was it?

(Same objection.)

Ans. In several places. I saw it now and then in the laboratory.

X 77. In what was the model packed inside of the box?

(Same objection.)

Ans. Which model?

(Same objection.)

X 78. Exhibit 10.

Ans. In paper, I think.

X 79. Who put in the paper, into the box?

(Same objection.)

Ans. I don't exactly remember.

X 80. Who nailed up the box?

(Same objection.)

Ans. I don't remember.

X 81. Who wrote the tag?

(Same objection.)

Ans. I don't remember.

296 X 82. Who fastened it to the box?

(Same objection.)

Ans. I don't remember.

(Same objection.)

X 83. Who put the tin things into the box?

(Same objection.)

Ans. I put some—Blackstone some.

X 84. Will you make oath that Blackstone put any of them into the box?

(Same objection.)

Ans. Yes, sir.

X 85. What parts?

(Same objection.)

Ans. I couldn't tell exactly.

X 86. Who got the box?

(Same objection.)

Ans. I can't remember; it was brought from down-stairs up.

X 87. Didn't you bring it up?

(Same objection.)

Ans. I don't remember.

X 88. Didn't you bring up the box, get the papers, pack in the things, nail up the box, and fasten on the tag?

(Same objection.)

Ans. I don't remember of bringing the box up.

X 89. Did you take the box to the depot express office?

(Same objection.)

Ans. I think the expressman called for it at the store.

X 90. Who put it onto the wagon?

(Same objection.)

Ans. It was the expressman's duty to do it; I think he did.

X 91. In your conversations with Berry, Saturday, did he ask you if you remembered packing up the model, Exhibit 10, and of its being sent to Portland?

(Same objection.)

Ans. Yes, sir; he did.

297 X 92. Did he ask you if you remembered that Blackstone assisted you?

(Same objection.)

Ans. Yes; he asked me.

WILLIAM MORAN.

Attest: A. H. DAVIS, *Examiner.*

PORTLAND, *May* 19, 1884—3 p. m.

Present: Wm. Henry Clifford, counsel for complainants; Wilbur F. Lunt, counsel for respondent.

Deposition of Caleb J. Emery.

Direct examination by Mr. LUNT:

Int. 1. What is your name, age, residence, and occupation?

Ans. Caleb J. Emery; 39 years old; Biddeford, Maine; physician.

2. How long have you been in practice, and where?

Ans. Thirteen years, in Biddeford, Maine.

3. Do you know William E. Emery, formerly clerk for John Berry?

Ans. I do.

4. Did you introduce him to Mr. Berry?

Ans. I did.

5. Were you in Mr. Berry's store frequently, both before and after William E. Emery went into Mr. Berry's employ?

Ans. Yes, sir.

6. Were you there when both Emery and Seigmond were clerks in the store?

298 Ans. Yes, sir; I was.

7. Please look at Exhibit 10, percolating device, and state whether or not you saw that device or apparatus in Mr. Berry's laboratory while Charles Seigmond and William E. Emery were clerks in Berry's store together.

(Objected to; not surrebutting, and cumulative.)

Ans. I have seen that or one very much like it while they were there.

8. Did you see anything more than the exterior arrangement of the apparatus you speak of?

(Same objection.)

Ans. Nothing more than the exterior.

9. Upon a careful examination of this Exhibit 10 have you any doubt in your own mind that this is the same apparatus you saw in Berry's store while Seigmond and William E. Emery were together employed there?

(Same objection.)

Ans. I have not.

10. Do you know whether or not William E. Emery and John Berry had some difficulties which led to the discharge of Emery from his place in the store?

(Same objection.)

Ans. I knew there was some difficulty, but I did not know exactly what it was.

11. Do you know whether or not Edwin U. Blackstone was employed in Mr. Berry's store while Seigmond was there?

(Same objection.)

Ans. I think he was not.

12. State how often you have been accustomed to visit Mr. Berry's store from 1878 to the present time.

(Same objection.)

Ans. From two to four times a day and sometimes oftener. My office is close by, and my practice has been to trade there exclusively.

299 Cross-examination by Mr. CLIFFORD:

X 13 (*de bene esse*). Can you positively swear that you saw this arrangement of tins which are now before you, called Exhibit 10, at the time referred to in int. 7?

Ans. I saw that one or one similar. I could not positively say it was that particular one.

X 14. You do not testify, then, that it was this particular one?

Ans. No, sir.

X 15. As to the one which you saw, do you know anything except that there were two vessels presenting on the outside the appearance of tin cylinders that you can positively testify to?

Ans. That they were connected with a rubber tube; that was all.

X 16. Can you testify that either of them had the little nipple to which I now call your attention?

Ans. No, sir.

X 17. Can you testify that either of them had the handle to which I now call your attention?

Ans. I cannot; I did not examine them closely.

X 18. Can you testify that either of them had the removable funnel to which I now call your attention?

Ans. I cannot.

X 19. Can you testify that both of the vessels that you say had the faucets which are seen on these?

Ans. I did not examine them, and consequently cannot say they had.

X 20. Could you testify that they were vessels made one with a much deeper pitch to the funnel-shaped end than the other one from actual memory?

Ans. I could not. I only saw them at a distance, with the liquid dripping through them.

300 X 21. Can you positively testify that they were vessels of the same diameter at each end?

Ans. I could not, as I did not measure them.

X 22. Can you testify positively in what positions they were placed?

Ans. One of them was suspended from the ceiling and the other was resting on a shelf. I think there was a hole in the shelf. The liquid was dripping through into a vessel below.

X 23. From your memory of the two vessels which you saw at that time and from no other source can you positively state, since you do not remember the handle, the faucets, nor the nipple, which was uppermost and which was below?

Ans. I cannot.

X 24. Do you or not remember a screw cap like the one now shown you?

Ans. No, sir; I cannot.

X 25. Can you swear positively that the vessel which you suppose corresponded to the one I now hold in my hand, which is the one having the nipple thereon, was with the nipple downward or with the nipple uppermost, since you do not remember either the nipple or the faucet?

Ans. As I do not remember the nipple, I couldn't state whether it was uppermost or not.

X 26. Now, Doctor, does your memory of this thing which you saw amount to anything more than this, that at a certain time in Berry's shop you saw two tin vessels connected by a rubber tube similar to these two; I mean a recollection to which you can make oath?

Ans. Nothing more.

X 27. Can you positively testify that you saw this affair while William E. Emery was actually a clerk in the store?

Ans. Yes, sir.

X 28. Can you give the year when you saw it there?

Ans. It was during Siegmond and Emery's clerkship—
301 before Siegmond left. I should think it was five or six years ago, as near as I could judge.

X 29. You would fix the date, as nearly as you can judge, at about five or six years ago, would you not?

Ans. Well, it was during Siegmond's clerkship. I should think it was about 1878.

X 30. Can you positively testify, Doctor, as to the size of the vessels you remember of seeing in Berry's shop in 1878, compared—I will say first—with the one with the nipple on?

Ans. I cannot say positively as to the size, but I should think they were about the size of those.

X 31. Can you state positively that one of them was not about the size of Exhibit 9, now shown you?

Ans. I don't think it was. I think the vessel was larger.

X 32. Do you state positively that it was larger?

Ans. Yes.

X 33. Now, do you state clearly that both of these vessels were of the same size that you saw?

Ans. I should think they were, very nearly. Of course I have nothing but memory to go by.

X 34. But you do not state positively as to that, do you?

Ans. No; I would not state positively that they were, for I saw them some ten feet off, but I have no doubt that they were of the same size.

X 35. Can you state positively from your memory that the vessels were not placed as I now hold them (*i. e.*, the one having the handle lowest)? I do not ask about your present knowledge, but your recollection.

Ans. I think the one with the bail was the uppermost.

X 36. Do you testify to that positively?

Ans. Yes, sir.

X 37. Have you seen this device since that time in the same room, or do you not remember?

Ans. I have seen it at times. I never examined into it very closely.

302 Redirect by Mr. LUNT:

R. D. 38. State whether or not, while Siegmond and Emery were clerks in the store, you often alluded to it in their presence; and, if so, how?

(Objected to; not surrebutting; cumulative.)

Ans. I have, on one or two different occasions, alluded to it as a hospital syringe.

C. J. EMERY.

Attest: A. H. DAVIS, *Examiner.*

PORTLAND, *May* 21, 1884—10 a. m.

Present: Wm. Henry Clifford, counsel for complainants; Wilbur F. Lunt, counsel for respondent.

Deposition of John Berry.

Direct examination by Mr. LUNT:

Int. 1. Are you the complainant, John Berry, in this cause?

Ans. I am.

2. Was William E. Emery in your employ? If so, state when and where.

Ans. He was, at my drug store, in Biddeford, from the spring of 1880 until December, 1881.

(Objected to; not surrebutting; immaterial.)

3. State whether or not you had any trouble with him; and, if so, whether he voluntarily left your employ or whether you discharged him.

(Same objection.)

303 Ans. I had trouble with him and did discharge him.

4. What was the trouble for which you discharged him?

(Same objection.)

Ans. For drunkenness and for embezzlement.

5. See Exhibit 10. State whether or not that Exhibit 10 was in the laboratory in your store during all the time Mr. Emery was in your employ, and did he use it?

(Same objection.)

Ans. It was in my store during all the time he was in my employ, and the use by Emery was mainly confined to his cleaning it after my using it.

6. Was Edwin U. Blackstone in your employ; if so, when and where?

(Same objection.)

Ans. He was; in my drug store, in Biddeford, from the spring of 1881 until April, 1884.

7. State whether or not Exhibit 10 was in the laboratory in your store during the time Blackstone was there.

(Same objection, and cumulative.)

Ans. It was.

8. At what time did you cease using said Exhibit 10; where was it put, and when did you send it away from the store to be introduced into this case?

(Same objection.)

Ans. The lower part of Exhibit 10—meaning the vessel containing the diaphragms—was laid aside in the fall of 1882, and remained without being used up to November, 1883, when it was sent to Portland to be used in connection with this case, and I have not had it since.

9. Did Blackstone leave your employ voluntarily or otherwise? State the cause.

Ans. Edwin U. Blackstone was discharged from my employ for being unsteady and for embezzlement.

304 Cross-examination by Mr. CLIFFORD:

X 10. When did Seigmond leave your employ?

Ans. August 2, 1880.

X 11. What did he leave for?

(Objected to; irrelevant.)

Ans. Trouble with Mr. Emery.

X 12. Didn't you and he have some trouble?

(Same objection.)

Ans. Only that brought about by Mr. Emery.

X 13. Who was your clerk before Seigmond?

(Same objection.)

Ans. Watson G. Sly.

X 14. When did he leave?

(Same objection.)

Ans. In 1876—the spring.

X 15. What did he leave for?

(Same objection.)

Ans. He moved to Michigan with his brother-in-law.

X 16. Did you have any trouble with him?

(Same objection.)

Ans. No, sir.

X 17. Didn't Seigmond embezzle?

(Same objection.)

Ans. No, sir; he was an honest boy.

X 18. How long have you had Moran?

(Same objection.)

Ans. Two years this month.

X 19. He is an honest boy, isn't he.

(Same objection.)

Ans. To my best knowledge and belief he has proved himself so thus far.

X 20. Would he have proved himself to be so if he had contradicted your story about the percolator, Exhibit 10?

(Same objection.)

305 Ans. He would not if the statements made were according to his best knowledge and belief.

X 21. Why did you not give me the name of Blackstone in your former cross-examination when I called for the names of all who were in your store at the time you say you had Exhibit 10 in your shop?

(Same objection.)

Ans. I know of no reason, excepting Blackstone's acquaintance with Exhibit 10 being so short as to be of no importance; otherwise it would have been freely given.

X 22. You have just sworn positively that Blackstone was employed by you while Exhibit 10 was in your store. If his statements are of sufficient importance to be contradicted by you why didn't you happen to remember his name at your first examination?

(Same objection.)

Ans. I did not suppose Blackstone would ever be called to testify in this case.

X 23. Not supposing Blackstone would be called by the complainant you omitted to give his name, did you not?

(Same objection.)

Ans. Not on that ground was his name omitted.

X 24. Now, do you testify, on being called on to give the names of all who were in your store at the time referred to in your former cross-examination, you did not think of a man who had been your clerk for a year or two and who still resided in the town of Biddeford?

(Same objection.)

Ans. His term of service being of so recent date I did not consider it of any importance; otherwise it would have been cheerfully given; also the question was asked what clerks had been in my employ.

X 25. When you testified before you stated in effect that the only new thing in your patented percolator was the screw rod and the diaphragms, did you not?

306 (Same objection.)

Ans. Yes; and in combination with a percolating vessel.

X 26. Do you say that that is the way you testified in your first deposition?

(Same objection.)

Ans. To my best knowledge and belief, I think it is.

X 27. Did you see the article published in the Druggists' Circular by Rosenwasser somewheres about 1880 or 1881?

(Objected to; not inquired of in direct.)

Ans. At some period after 1881, in looking for evidence of various changes he had made from time to time, I saw it?

X 28. When was this?

(Same objection.)

Ans. Awhile previous to the hearing on preliminary injunction.

X 29. How long have you taken the paper?

(Same objection and immaterial.)

Ans. I could not say.

X 30. Did you take it in 1879?

(Same objection.)

Ans. I did.

X 31. Ever since?

(Same objection.)

Ans. I have.

X 32. You never saw this article of Rosenwasser's until you were hunting up evidence, did you?

(Same objection.)

Ans. No, sir.

X 33. How long did Emery work for you?

Ans. From the spring of 1880 till December, 1881.

X 34. How long did Seigmond work for you?

(Objected to; immaterial.)

Ans. About four years.

X 35. How long did Sly work for you?

(Same objection.)

307 Ans. I think about one year.

X 36. Who worked for you before him?

(Same objection.)

Ans. John Ayer, of Haverhill, New Hampshire.

X 37. For how long?

(Same objection.)

Ans. About four years.

X 38. What do you now state to be the new elements or parts in your percolator?

(Objected to; inadmissible; improperly put; matter not inquired of in direct.)

Ans. As set forth in the specifications of the letters patent.

X 39. State, naming the parts, what you now consider as the new parts in your percolator without reference to the specifications.

(Objected to; counsel instructs the witness that he is not required to answer, as the interrogatory pertains to matter not inquired of in direct examination; answer would be inadmissible and irrelevant, and he demands a ruling of the court.)

Ans. By instruction of my counsel I decline to answer the question.

X 40. Are you afraid to answer for fear that you will not agree with what you stated in your first deposition?

(Objected to same as to X 39, and counsel instructs witness that he may decline to answer, and he requests the ruling of the court.)

Ans. Counsel instructs me not to answer, and I obey.

X 41. Are you afraid to answer because you don't remember what you said upon the subject in your first deposition?

(Same objection.)

Ans. I simply obey instructions of my counsel.

X 42. You decline to answer?

(Same objection.)

Ans. I obey instructions of my counsel, and do not answer.

308 (Respondent's counsel demands a ruling of the court and asserts that counsel for the complainants is wilfully and improperly propounding interrogatories for the purpose of consuming time and concerning matter which he has no right at this stage of the case to inquire about.)

X 43. How long do you now state that Exhibit 10 was put away on a shelf before it was sent into Portland?

Ans. The lower vessel, called the percolator, was put aside in the fall of 1882 and there remained until November, 1883.

X 44. Where was the other part?

Ans. The reservoir and tubing remained suspended from the ceiling in the laboratory from the the fall of 1882 until November, 1883, when it was sent into Portland.

X 45. Did you get your first idea of the percolator in Exhibit 10 from the descriptions in Geiger's Pharmacy, from pictures, or how did you get it?

(Objected to; inadmissible, and counsel repeats statement in objection to answer 39.)

(Witness is instructed not to answer.)

Ans. By instruction from counsel I decline to answer.

X 46. Was the reservoir and the tube hanging up in your laboratory when you made your affidavit under the motion for a provisional injunction in this case?

Ans. It was.

X 47. Was the percolator up on the shelf at the same time?

Ans. The percolator was on a shelf.

X 48. Where were the diaphragms at that time?

Ans. In the percolator.

(Complainants here introduce in evidence a certified copy from the Patent Office of the United States, the same to be marked "Complainants' Exhibit O, A. H. D., Ex'r.")

(Respondent's counsel objects to the introduction of said Exhibit O as manifestly improper, irrelevant, and inadmissible.)

X 49. Would you believe Edwin U. Blackstone when testifying under oath?

309 Ans. No.

X 50. Would you believe William E. Emery when testifying under oath?

Ans. No.

X 51. Previous to May 1, 1884, did you ever know of any instance of their committing perjury?

Ans. I have known them both to practice extensive lying.

X 52. (Question repeated.)

Ans. Under oath I have not.

X 53. How long have you known of Blackstone's practicing extensive lying?

Ans. For some time previous to his discharge.

X 54. How long?

Ans. I could not set any date.

X 55. State as near as you can.

Ans. I have known that he did not respect the truth for perhaps two years.

X 56. Do you know that he has practiced extensive lying for two years prior to the first of this month?

Ans. I know that he has with me.

X 57. How long has he been unsteady?

Ans. He has been very irregular in his habits for a year previous to his discharge.

X 58. How long has William E. Emery practiced extensive lying, to your knowledge?

Ans. From the best information I can obtain he has always done so.

X 59. (Question repeated.)

Ans. I detected after he had been with me a short time—I cannot say how long—that he was not truthful.

X 60. How long was he unsteady while in your employ?

Ans. I discovered it in the summer of 1880, and he continued to have spells till the time of his discharge.

X 61. You declined to shake hands with these young men when they came in to testify and when they retired, didn't you?

310 (Objected to; irrelevant.)

Ans. I did with Emery.

X 62. Did you request Dr. C. J. Emery to come into Portland and see Wm. E. Emery when he came here to testify?

(Objected to; irrelevant, and same as to cross-int. 39, and ready to go to the court, and witness is instructed to decline to answer.)

Ans. I decline to answer.

(Intermission, 12.30 to 3 p. m.)

3 P. M.

X 63. During the cross-examination of one of your witnesses and when I had put a question to him, asking from what the reservoir in Exhibit 10 was suspended, did you not, standing upon one side of the room, point up to the ceiling, by way of intimating to the witness on the stand that the reservoir was suspended from the ceiling in your laboratory?

(Objected to as in 39; irrelevant; witness instructed not to answer.)

Ans. I decline to answer.

X 64. You don't deny it, do you?

(Same objection, &c.)

Ans. I decline to answer.

X 65. How many experiments had you made with Exhibit 10 previous to the year 1881 in all?

Ans. I could not say.
X 66. Had you made a dozen?
Ans. Yes, sir.
X 67. In your laboratory?
Ans. Yes, sir.
311 X 68. When did you finally bring them to success?

(Objected to as to cross-int. 39; witness need not answer.)

Ans. I decline to answer.
X 69. When did you first get up your two diaphragms with the rod threaded in different directions, as now shown in Exhibit 10?

(Same objection, &c.)

Ans. I decline to answer.
X 70. You consider Emery and Blackstone pretty bad fellows, don't you?
Ans. I consider that they have perjured themselves in this case.
X 71. You desire the court to understand that they have committed perjury and should not be believed, do you not?
Ans. I do.
X 72. And in order to show to the court that they are capable of committing perjury and that they have you testify that they embezzled from you, do you not?

(Objected to; question inadmissible.)

Ans. They have embezzled from me.
X 73. (Question repeated.)

(Same objection.)

Ans. I do.
X 74. You realize, I suppose, that if their testimony is not regarded as utterly false your story about Exhibit 10 becomes, to say the least, a little doubtful, do you not?

(Objected to on the ground that the argument of the learned counsel and his conclusions and speculations are impertinent, unprofessional, improperly embraced in the interrogatory.)

Ans. I have answered as questioned, and cannot anticipate the verdict of the court.
X 75. Don't you realize the fact that their testimony is in direct contradiction to your story about Exhibit 10?

(Objected to as before, and inadmissible.)

312 Ans. It is contradictory to mine and to several other reliable witnesses.

JOHN BERRY.

Attest: A. H. DAVIS, *Clerk.*

(Testimony closed.)

COMPLAINANTS' EXHIBITS.

COMPLAINANTS' EXHIBIT K. A. H. D., Ex'r.

I, John Berry, of Biddeford, in the county of York and State of Maine, being of lawful age, on oath depose and say—

That I am the defendant in the above-entitled cause. I am now and have been engaged in business as a practical pharmacist for about fifteen years, in the city of Biddeford aforesaid, and during that time I have diligently studied and become well versed in the theory and practice of the arts and sciences pertaining to pharmacy. During five years next prior to May 31, 1882, I directed my attention to devising methods and experimenting for the purpose of saving and avoiding the loss of alcohol and other liquids used in the various preparations, tinctures, and extracts used in medicines, according to the formulæ contained in the U. S. Dispensatory, a standard work used by pharmacists in the United States. I devoted my efforts chiefly to devising and constructing a filtering or percolating vessel and chamber so constructed as to avoid evaporation of the liquid used in making the extract or tincture from the herbs or drugs and containing a device for holding the material
313 from which the tincture or extract was to be made in a firm and fixed position, inasmuch as different drugs or quantities of drugs require varied and greater or less compression, both before and after the liquid is applied, in the process referred to, for the purpose of preventing, first, the undue expansion of the drug or other material used when subjected to the application of the liquid or menstruum; second, the expansion being so prevented vertically, as well as laterally, to cause the expansive force to be exerted within the body of the drug closing the interstices and forcing the liquid or menstruum into and through the minute drug cells, thus producing a peculiar and powerful action of the drug upon itself of a most beneficial character in extracting the essential principle of the drug therein continued.

A tight percolating or filtering chamber into which the liquid or menstruum is admitted through a tube or pipe connected with an elevated reservoir, whereby pressure in the application of the liquid to the drug is obtained, is an old device in common use for many years. This method of applying the liquid or menstruum in making extracts and for filtering purposes is described and illustrated in various published works in public and common use, to wit: In the Encyclopædia Britannica, vol. 9, page 167, reprinted by Scribner & Co., New York, 1879; Ures' Dictionary of Arts and Manufactures, vol. 2, pages 370 to 372, published in 1878; U. S. Dispensatory from 1851 to 1879, 9th edition, page 784; 13th edition, 932 and 933; 14th edition, pages 972 and 973; Parish's Pharmacy, 3d edition, page 135, published in 1867; Prof. C. Mohr's Pharmaceutical Chemistry, published in 18—, contains an illustration on page —; also Watts' Dictionary, page —; Druggists' Circular, pages 26–82.

These works describe a percolating or filtering apparatus consisting of an elevated reservoir connected by a tube or pipe, flexible or otherwise, with a percolating vessel below at a restricted mouth or opening corresponding with the size of the tube or pipe.

314 The above works I refer to and make the references a part of my case. Reservoirs of tin or glass of various sizes, with rubber tubes or pipes several feet in length, provided with pinch cocks to regulate the flow of the liquid through the same, have been manufactured and sold in the United States, to be used for sundry purposes, for more than ten years.

Cuts, circulars, and advertisements of the same, attached to and making a part of this affidavit, marked Exhibit B, show the identical device and principle used with my percolating vessel, and the device so illustrated has been published and most extensively sold in the United States by druggists, including myself, for more than four years past.

The reversible percolator patent granted by the United States to Woolston & Corfield Feb. 22d, 1870, number 100,232, is charged with the percolating liquid by means of a tube or pipe connected with the restricted opening of the percolating vessel. The percolator of Albert Merrill, described in letters patent of the United States granted June 14, 1870, describes the manner of introducing the menstruum or percolating fluid into the percolating vessel or chamber from a reservoir by means of a tube connected with a restricted orifice at the upper end of said vessel. The form and exterior construction of the percolating vessel or chamber, when used in combination with a tube and reservoir, as above described, is shown in the published descriptions above referred to to be cylindrical, with restricted orifices or openings at each end.

One end or the other is made removable for the purpose of introducing the drug or other material into the chamber.

As shown by said published descriptions, a percolating vessel used in combination with a tube and reservoir, the flow of the liquid being regulated by a stop-cock, was old and well known to pharmacists many years ago.

In the course of my business, more than four years since, at Biddeford, I used a percolating vessel constructed in the form of an ordinary funnel, the body elongated in a cylindrical form. Placing the drug in this vessel, the form and interior arrange-

315 ment of which is shown in Exhibit C, annexed and made a part of this affidavit, I secured the drug D in position by placing upon the exposed surface of the drug a flat perforated plate, C, pressing the same downward and holding it in place by means of a brace, B, backed by a cross-bar, A, fitted into the vessel, as shown in the drawing. Without the perforated plate marked E, upon which the drug was placed, the swelling of the drug, when moistened, would speedily clog the orifice beneath it. Variation in the porousness of drugs caused the pressure induced by expansion in this contrivance to be irregular and results not reliable, and in practical use the objections to its use apparently were—

1st. The uncertain and variable pressure exerted upon the drug, affecting the strength of the extract.

2d. The expansion of the drug laterally and vertically caused the whole moistened body to become so fixed and impacted in the chamber that the plate C could not be removed without great injury to or the destruction of the chamber.

3d. As the residuum contains more or less fluid extract which could not be obtained except by removing the same and pressing it, the pharmacist was put to great trouble in so doing or suffered loss if he neglected to press it.

This affiant says that he has carefully studied and examined the specifications and drawing making a part of the letters patent granted to said Rosenwasser and referred to in his bill, and that a percolating vessel so constructed is not novel, but in its substantial form and arrangement has been heretofore discovered, described, and used as hereinbefore stated; that a percolating vessel constructed as shown in the drawing in said letters patent is useless, and said Rosenwasser has been obliged to provide other and different percolators, unlawfully using for the interior arrangement of his percolating chamber a device invented by one Samuel Theobald, of Baltimore, described in letters patent of the United States to him, numbered 177,173, dated May 9, 1876, simply inverting
316 the same. A description and drawing of said Theobald's invention, marked Exhibit P, is hereto annexed and made a part of this affidavit.

The exterior form and arrangement of my percolating chamber is similar to that described in the U. S. Dispensatory above named. The interior arrangement and device for holding the drug is the only new invention and improvement over old and well-known forms and devices.

The following is a brief description of my invention, which is shown in the cut in Exhibit G, hereto annexed.

The body of the percolating vessel, ordinarily made of metal, is cylindrical in form, semi-funnel shaped at both ends. This cylinder is constructed in two parts in such a manner that it can be opened for the purpose of filling for use, the two parts telescoping upon each other. When closed for use, as shown in the Exhibit G, the interior arrangement consists of two perforated concavo-convex diaphragms with threads of opposite pitch cut through bosses in the centre of each. These are connected by a rod threaded from the middle towards each end to correspond with the bosses, one end of said rod being headed to receive an adjustable hand wrench.

This device, although easily removable, is held firmly in place in the cylinder by means of locks and studs attached to that diaphragm through which the threaded end of the rod passes and the inner side of the cylinder. Applying the wrench at each turn of the rod, one diaphragm rapidly approaches the other, the right and left threads affording twice the speed and power obtained by the use of one thread.

The diaphragms do not turn; the rod only is turned. The drug is introduced into the cylinder resting upon the fixed diaphragm,

and thereupon the other diaphragm, being connected by means of the rod above described, operates as and for the purpose hereinafter mentioned, the drug being contained between the concave surfaces of the diaphragms. The chamber or vessel being closed, the
317 menstruum or liquid can be admitted at either end, the convex surface of the diaphragm presented duly distributing the same over the whole surface of the drug, thereby equally and thoroughly saturating the entire mass.

This percolating vessel does not resemble in any respect the device described in letters patent of the United States issued to said Rosenwasser, numbered 256,504, a copy of which I refer to, the description there showing simply an inverted funnel forming a chamber closed at one end and open at the other, the liquid being applied to the drug through a tube attached to the beak and the drug held in place by a flat perforated plate inserted in the mouth of this funnel.

It will be at once seen by referring to the drawing in Rosenwasser's patent that the contrivance cannot be successfully used, the expansion of the wet drug completely impacting the mass in the chamber, so that it is quite impossible to remove the plate without great injury to the walls of the chamber, while at the same time, for want of a suitable diaphragm at the other end, the liquid penetrates the mass in that part directly below the mouth of the beak, leaving a great part of the drug imperfectly acted upon. The wide open orifice or mouth at the opposite end, described as being for the purpose of charging the chamber and discharging the fluid or menstruum, is useless, wasteful, and impractical, and, as shown in the cuts attached to the plaintiffs' advertisement and circulars, marked Exhibits E and F, are not used by the complainants, but were abandoned by them in May, A. D. 1882. Subsequently the manner of inserting the flat perforated plate, as patented by Theobald, was adopted by complainants, as shown in said exhibits.

This affiant says the device which he has above described as his invention, used in combination with a reservoir and tube, was secured to him by letters patent of the United States No. 266,081, dated October 17, 1882, which he refers to and makes a part of his case.

This affiant avers that said Nathan Rosenwasser was not the first and original inventor of the percolating device described
318 in his letters patent aforesaid; that the said letters patent granted to Nathan Rosenwasser are null and void for want of novelty and utility.

That affiant's invention does not infringe upon the complainants' device described in Rosenwasser's letters patent.

The affiant also says that he is the owner of unincumbered real estate in Biddeford, Maine, of the value of three thousand dollars, and also the sole owner of a large stock of mechandise in his store, in said Biddeford, worth at least five thousand dollars, and that he is otherwise amply able to respond to any judgment or decree that complainants can recover in this suit; that the validity of said

Rossenwasser's letters patent has never been adjudicated by any court.

JOHN BERRY.

STATE OF MAINE, *York County,* } ss:

MARCH 31, 1883.

Then personally appeared John Berry, respondent in the above-entitled suit, and subscribed the above statements and made oath that the same is true.

Before me—

[L. S.] C. E. GOODWIN,
Notary Public.

COMPLAINANTS' EXHIBIT O. A. H. D., Ex'r.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the original claims in the matter of the let-
319 ters patent granted John Berry October 17, 1882, number 266,081.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 19th day of May, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[L. S.] BENJ. BUTTERWORTH,
Commissioner.

Specification forming part of Letters Patent No. 266,081, dated Oct. 17, 1882.

Original Claims.

1. The combination, with the chamber A, having inlet and discharge openings, of a suspended filter or percolator composed of two adjustable perforated diaphragms.

2. The combination, with the chamber A, of the rod having right and left screw threads and the diaphragms D D.

3. In combination with the chamber A, having locking studs, the suspended percolator, consisting of adjustable perforated diaphragms mounted on a screw rod.

4. In combination with chamber A, the independent removable filter or percolator, consisting of a screw rod, the independently removable diaphragms, and means for suspending the same within the said chamber.

5. The improved percolating device, consisting of a reservoir, a percolator having an adjustable diaphragm adapted to contain the drug or other medium, and having inlet and discharge openings,

the inlet opening being connected to the said reservoir, and a receiving vessel, R, having an air-tight connection with the said percolator, and provided with an air vent, all substantially described and shown.

320 COMPLAINANTS' EXHIBIT ROSENWASSER TRANSLATION NO. 2. A. H. D., Ex'r.

The Real press consists essentially of a hollow cylinder, in which the substance to be extracted in a powdered condition is held fast between three sieve-like perforated plates, so that it can move from neither side. If the cylinder is open on both sides, then a cover is secured air-tight at one end, which has a hole in the center, into which a high tube also fits air-tight. Between the cover and the upper perforated plate must remain some space.

During extraction the cylinder is placed upright, so that a vessel for receiving the liquid may be placed below it. You pour liquid into the tube, which may as desired be narrow (but not capillary), upon the substance, and keep the tube constantly filled. The menstruum presses through the substance and comes laden below with the extractive matter. From the—on page 22 mentioned—hydrostatic law it follows that every liquid column presses at its base according to its height, though it may at its base be narrowed or widened.

For pharmaceutical purposes various changes have been made with the Real press, whose descriptions are *lie* scattered through various pharmaceutical and chemical journals.

My own—in the page 130 mentioned pamphlet—announced simplifications consist essentially in this, that instead of a cylinder open at both ends of pure tin, which is locked with a cover, the cylinder has a bottom provided with a hole in it, which forms a projecting tap one inch high. On the bottom small pieces of wood are laid or the cylinder is provided one inch over the bottom with three or four projecting studs or a projecting ring, upon which the perforated plate is laid. Upon this is placed a woolen rag, and spreads the substance over it while it is packed, according to circumstances.

Then another rag is placed on and a second plate laid on. For
321 tightly holding this supports of wood of different lengths —, which are inserted either under studs projecting at the end of the cylinder or under cross-pieces that pass through holes which are attached to a welt on the under part of the cylinder outwardly, or one has made a second cylinder, open at both ends, which fits snugly into the first, but can be easily telescoped in and out.

This has its entire length, in distances of from one-half inch on two opposite sides, always horizontal notches which, for the better durability of the cylinder, may alternate on different sides. The outside cylinder has on its open end movable hooks. The inside cylinder is placed upon the perforated plate when the outer one is prepared, and the hooks pressed into the proper holes, whereby all is held together. (See Fig. 10, copper plate).

This arrangement is, particularly with small machines, very con-

venient, and answers also for larger ones; otherwise one can have made for larger ones an iron ring fitting into the cylinder. Into this ring two or three strong iron rods — sunk in equal distances and screwed. At one length—that is, about ($\frac{7}{8}$) seven-eighths the height of the cylinder—they are bent over outwardly, so that the returning outer ends are parallel with the inner; the outer ends must be at least as long as the cylinder. They pass through holes on the welt. Upon the welt is found a metal ring that also has holes in it; through these the rods go. These holes contain little screws, which answer for tightly holding the rods. (One can, however, place the screws in the welt itself; then this, however, cannot be made of tin, but must be of iron or brass. It would have to be tightly secured to the cylinder, which so is not necessary. The ring can be movable and easily manipulated.) All parts of this arrangement (at least those that go into the cylinder) must be thickly coated with tin. The application is easy. The rods are passed down through the holes of the welt and outer ring till the inner ring fits upon the substance and screws it tight.

322 A very practical change of the Real press is made by Beindorf. The cylinder is fitted into a steel plate, whose cover is movable, so that through turning the same the vessel can be easily filled and can be connected with the rod. The empty space in the cylinder is filled with rings of tin, and the apparatus fitted to a funnel by a hook that fits into a projecting welt. (See Magazin for the Pharmacie, volume 9, page 185; also Fig. 11 of the copper plate). Similar machines can be made of good sheet tin; also stone-ware or wood, the ways of holding tightly the substance to be extracted being modified according to the nature of the material of which the cylinder is made.

The cylinder, filled as above indicated, is placed upon a chair that has a hole in the center, into which the same fits and rests upon its welt. One places a receiving vessel under. The cylinder must be open below. One can, however, place a funnel below, so that the spurting and contaminating of the extractive may be hindered, but air-tight the opening dare not be, else the working of the vessel is hindered. (The closer description of the handy apparatus with a chair, having a movable cover, in which the cylinder is placed, see at the end through the explanations of the plate). The upper empty space is filled with menstruum, and a tube is fitted into the bottom; it can be of sheet tin, glass, wood, or a leather tube, and so forth.

Most suitable for pharmaceutical purposes is a tube of sheet tin. It need only be the thickness of a little finger. Its height should be about eight to twelve feet at the upper end, broadening one foot high, funnel form, so that the upper end has one and one-half inches in the clear. Generally they believe the column should be much higher, thirty to sixty feet, which height, however, shrinks its usefulness.

According to my experience, the height of eight to twelve feet given is sufficient for pharmaceutical purposes. One can rapidly, thoroughly extract 20 lbs. of plant substance with it. The liquid should press through no stronger than will slowly pass through

323 the substances to be extracted, which are packed more — less tightly so as to come in contact with all the soluble parts, and so, while new liquid always follows, forcing the first ahead, the cells by and by are fully washed out. An eight-foot column works after this manner as a sixty-foot high one, only the latter presses through the substance faster. With too heavy pressure of such a high liquid column even strong machines might burst, endangering the operator.

Bore a hole into the cork that fits into the open bottom and pass the lower end of the tube through. The cork is softened in hot water and then fitted tight into the open bottom. Without further tightening, a good cork is thoroughly air tight and allows no liquid to pass. Near to the upper end of the tube a vessel is placed with the menstruum, so that the surface of the liquid is somewhat lower than the end of the tube. One sinks now a syphon into the liquid and the tube, drawing air through the tube with the mouth, while with lips, the thumb, and forefinger its influx from outside is hindered; the liquid will lift itself up and pass through the syphon, flow into the tube. This will fill itself with it, and so the liquid will work, pressing and dissolving upon the substance. It presses through it and passes through laden with extractive parts, at first often of a syrupy consistence, very clear.

You allow liquid to press through so long till the prescribed quantity is through or until one knows, through the taste, smell, and color of the percolate, that all is extracted.

One has only here to see that the syphon is always dipped under the liquid, and also from time to time to fill into the vessel, yet so that the surface is always under the level of end of the tube, else the tube would overflow. For the stopping of the operation as wanted a cock is fitted to the tube that can be closed, or one closes, after taking the syphon away, the upper end of the tube.

For an outlet for liquid I have made, upon the side where the first diaphragm lies, a small diagonally bent outwards hollow tap, which is provided with a cock, or may be closed with a
324 cork (see drawings). One can so let all liquid out of the tube and cylinder, and the substance can with different liquids easily be extracted without taking the apparatus apart.

If the lower part of this tube is bent over, or if a bent tube is fitted into the cylinder air-tight, — fits this onto the tube and bends it over with its open end upwards and proceeds otherwise as just mentioned, one has the same action. The tightness of the second diaphragm can be more easily secured, and with screws, &c., the substance during extraction can be more tightly pressed.

The extracted liquid could be, through the closeable openings, be removed or let off with a syphon.

The filter machines of Würzer and Romershausen mentioned on page 133 are applications of apparatus for filtering. (The elevated tube is not always necessary; so Haule extracts with a machine of two telescoping cylinders whose inside construction is like on page 157, described Real's press, the inner cylinder placed upright and fastened; the liquid is poured in directly; it permeates the moistened

substance packed between both cylinders and comes out laden with extractive matter. (See Magazin for Pharm., vol. 11, page 57.) Our coffee filter machines are similar apparatus; yet the extraction here, in proportion to the quantity of substance, is of slow process and only applicable in a small way.)

This method makes the application of warmth with extraction of compact organic parts unnecessary. The extractives are unchanged, therefore contain the strength of the plant in purest form, and as often a small quantity of solvent is to be had, so one obtains the most concentrated extract in the shortest time. Considerable quantities of the strongest tinctures may be made within often less than an hour with the Real press, &c.; also this process may extract with heat, if the solvent is heated and allowed to soak into the substance, which is accomplished in much shorter time than by boiling. The extractives are much cleaner (it is not then
325 necessary to strain), and they contain also the volatile parts. That the liquid should not cool so soon the tubes can be of wood and the cylinder surrounded with a wooden jacket. According to the ease with which the substance is capable of extraction, it must be more or less finely powdered. Very essential for the obtaining of good work is the uniformly spreading of the powder in the cylinder and the proper pressure upon it, according to its nature.

The substance is moistened to a quite wet condition uniformly, passes it through a sieve, lets this absorb for several hours, and fills it then into the cylinder, in small portions and on all sides as well as possible, pressing it down with the hands.

Respondent's Exhibits.

Respondent's Exhibit 14*a*. J. S. D., Ex'r.

(From "Handbuch der Pharmacie," by Dr. Philipp Lorenz Geiger, volume I, published in 1830, and printed by E. F. Wolters in Stuttgart, Germany.)

Page 157, vol. I: The Real press consists principally of a hollow cylinder, which contains the powdered substance to be exhausted between two perforated plates, tightly packed, so that the substance cannot move to either direction. If the cylinder is open at both ends a cover is fitted air-tight at one end, having a hole in the centre, into which a long tube is fitted, also air-tight. Be-
326 tween the cover and the perforated plate mentioned some space must remain. In extracting, the cylinder is placed vertical, so that a vessel for gathering the liquid may be placed underneath. Through the tube, which may be as narrow as desirable (only no capillary tube), liquid is poured upon the substance and the tube must be kept full continually. The menstruum penetrates the substance and leaves the apparatus at the lower end of it impregnated with the soluble portions of the substance. From the hydrostatic laws explained on page 28, it is clear that every column

of liquid exerts a pressure on its base in proportion to its height, but the column may be narrower or wider in diameter from the base upwards.

For pharmaceutical purposes several changes have been made with the Real press, the descriptions of which are scattered through the columns of the pharmaceutical and chemical press. My improvement, as described on page 124, being a simplification of the apparatus, consists essentially in replacing an open cylinder (open at both ends) of pure tin, to be provided with a cover, by a cylinder having a bottom provided with a hole, in such a manner as to form a hollow plug about one inch in height. On this bottom are placed small pieces of wood, or the cylinder is provided, one inch above the bottom, with 3 or 4 protuberances, upon which the perforated plate is laid. Upon the latter a woolen rag is placed, the substance to be exhausted being spread uniformly, and more or less firmly, according to circumstances, over the same; then the second cloth and the second plate are put on. In order to keep them in position wooden supports of various lengths are used, which either pass through plugs projecting from the end of the cylinder or through holes in the lower part of the cylinder, forming a projection, the said supports being in this case held in position below suitable cross-bars.

Or a second cylinder of tin, may be made of ordinary tin-ware (Weissblech), may be made, fitting exactly into the first-mentioned cylinder, but which can be taken out and inserted again
327 easily. This second cylinder is provided, along its entire length, in distances varying from ½ to 2 inches [with] horizontal opposite openings, made so as to not interfere with the durability of the cylinder. The outer cylinder is provided at its open end with movable hooks. The inner cylinder, after the outer one has received its contents, is placed upon the perforated plate, the hooks are forced into the horizontal openings mentioned, by which means everything is kept in proper position. ("See figure 10 of copper plate" in Liebig's edition.)* This arrangement is very handy for small machines, although it is also adapted for large ones. For the latter, however, a large ring may be used, fitting into the cylinder. Into this ring two or three strong iron rods are screwed vertically in equal distances. In a height amounting to about ⅞ of the height of the cylinder they are bent to the outward, so that the returning outer ends run exactly parallel with the inner ones; these outward ends must be at least as long as the cylinder. They pass through holes provided in the circular projection mentioned above. Above this circular projection is placed a metal ring, provided also with holes through which the rods pass; these holes contain small screws for fastening the rods. (Of course these screws could be applied to the vertical projection itself, but then the latter would have to consist of iron and brass, not of tin. It would have to be solidly and firmly connected with the cylinder, which otherwise is not necessary. The ring may be movable and of light dimensions.)

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* Sentence in parenthesis in pencil. A. H. D., Ex'r.

All parts of this apparatus (at least those leading into the cylinder) must be thickly plated with tin (plattirt). Its application is very simple: The rods are pushed through the holes of the circular projection mentioned and through those of the outer rings until the inner ring rests firmly upon the perforated plate. They are then screwed tight.

A very practical change in the construction of the Real press has been introduced by Beindorf. The cylinder is fitted into a chair, the cover or seat of which is movable, so that by turning the
328 same the press may be filled and connected with the tube. The empty space in the cylinder is filled out with tin rings, the apparatus being closed by a funnel fitting by means of hooks in the circular projection mentioned above. (See "Magazin fur die Pharmacie," Bd. IX, p. 185, where an illustration of the machine may be found); "also Figure 11, of copper plate," in Liebig's edition.*

Similar machines may be made of good tinned iron, stone-ware or wood. The appliances for retaining the substance to be exhausted in position will have to be modified according to the nature of the body of the cylinder.

The filled cylinder, turned bottom up, is placed upon a chair having a hole in the middle, in which the cylinder fits and around which he [it] rests by means of the circular projection above mentioned. A vessel to receive the liquid is placed beneath. The cylinder must be opened at the lower end. A funnel may, however, be placed underneath in order to prevent spattering and introducing impurities into the extract, but the lower opening must and should not be closed air-tight, as this would interfere with the efficacy of the machine. The upper, empty space is filled with the liquids to be extracted. (See note I.—Translator.) In the opening in the bottom a tube is fitted, which may be made of tinned iron, glass, wood, leather, etc., or any tube may be used. The tube need be of the diameter of the little finger only. The height of it must be from 8 to 12 feet. At the upper end it widens, about 1 foot high, into funnel shape, so that the upper opening has a clear diameter of 1 and ½ inches. It is usually believed that the column must be a good deal higher—30 to 60 feet—which height, however, restricts and limits the use of the apparatus. According to my experience the height of from 8 to 12 feet, as stated, is sufficient for pharmaceutical purposes. Up to 20 pounds of vegetable material may with this apparatus be rapidly exhausted. The column of liquid
329 only must press so strong that it penetrates the matter to be exhausted (pressed more or less compact, according to its nature) slowly, in order to come in contact with all soluble parts of the same, new portions of liquid following and driving the former portions downward until the whole is thoroughly washed out. In this manner a column 8 feet in height acts as well as one 60 feet high, with the only difference that the latter penetrates the matter much sooner. Under such a high pressure even very strong machines may burst and prove dangerous for the operator.

* Last sentence in pencil. A. H. D., Ex'r.

A cork fitting in the opening of the bottom is perforated, and into the perforation the lower end of the tube is introduced so as to protrude sufficiently. The cork is heated by boiling water and then pressed firmly into the opening in the bottom. This gives an air-tight connection without the aid of a tube or other means. Near the upper end of the tube is placed a vessel containing the menstruum, the surface of which must be somewhat lower than the end of the tube. A syphon is now introduced into the liquid and in the tube, air sucked through the tube, so that the liquid will commence to flow through the syphon into the tube, which is thereby filled. The column of menstruum thus obtained acts, pressing and dissolving upon the substance to be extracted. It penetrates it and arrives laden with the soluble matter contained in the substance, at the lower end of the apparatus, often in a syrupy consistence. The liquid (menstruum) is allowed to act in this way until the required quantity of extract is obtained or until the percolate shows by taste, smell, and color that all soluble substances have been extracted. It is of importance that the syphon be always dipping into the liquid, and therefore more liquid must be given into the vessel from time to time, taking care that the surface of the liquid is always somewhat below the end of the tube, as this would otherwise overflow. In order to control the apparatus, stop or continue the operation, the tube is provided with a cock, which may be closed, if necessary, or the upper end of tube may be closed after removing the syphon. In order to allow the liquid to run off I have attached to the cylinder, at the side and where the first perforated plate lies, a small, hollow, slanting tube, provided with a stop-cock, or which also may be closed by a cork. In this way the liquid may be drawn off from tube and cylinder as convenient or necessary without taking the apparatus apart.

If now the lower part of the tube be bent, or if a bent piece of tubing is brought into air-tight connection with the cylinder, if this tubing is fitted to the tube mentioned above and the whole is inverted, working and manipulating as indicated above, the same result is obtained. The second perforated plate may then be kept in position yet easier, and by means of screws, etc., the substance could yet be pressed more strongly, if necessary. (II.)

NOTE I.—This sentence is obviously wrong, and may be classed as a printer's error. Probably it should read: "The upper empty space is filled with the liquids used for extraction." In the edition of the same work, edited by Justus V. Liebig, the same sentence reads: "The upper empty space is filled with the liquid to be extracted" (auszuziehenden Flüssigkeit). It should, according to the translator's views, read, "anszichende Flüssigkeit," equal to our term "menstruum."

H. C. HIEPE.

NOTE II.—The other matter up to the last mark is irrelevant, and I do not deem it necessary to translate it.

H. C. HIEPE.

331 RESPONDENT'S EXHIBIT 17. A. H. D., Ex'r.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted Nathan Rosenwasser April 18, 1882, number 256,504, for improvement in percolator.

In testimony whereof I, Benj. Butterworth, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 5th day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and eighth.

[L. S.] BENJ. BUTTERWORTH,
Commissioner.

1093.

To the Commissioner of Patents:

Your petitioner, residing at Cleveland, Ohio, prays that letters patent may be granted to him for the invention set forth in the annexed specification; and he hereby appoints the firm of Leggett & Leggett, of Washington, D. C. (consisting of M. D. Leggett and L. L. Leggett), *hereby appoint Leggett & Leggett, of Washington, D. C.*, or their duly accredited assistant, his attorneys to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

NATHAN ROSENWASSER.

Specification.

Be it known that I, Nathan Rosenwasser, of Cleveland, in
332 the county of Cuyahoga and State of Ohio, have invented certain new and useful improvements in percolators; and I do hereby declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings which form part of this specification.

My invention relates to percolating apparatus to be employed for filtering purposes or for making fluid extracts or decoctions, and it consists in a device constructed and adapted to operate substantially in the manner hereinafter specified.

In the drawings Fig. 1 represents my device in longitudinal section and Fig. 2 shows the application of said device when used as a filter or in making fluid extracts.

A is the main body of my percolator, B is a constricted inlet, C is the enlarged open end, which serves the double purpose of a discharge or outlet and as an opening through which the percolator is

charged with filtering substance when the device is to be used as a filter or with any drug from which an extract is to be made.

D is a perforated plate. This plate may, if desired, be replaced by any porous diaphragm or interposing substance, such as filter paper, cloth, pumice, or the like. This is to prevent the drug from escaping from the percolator during its use, and it is to be secured in position by suitable means.

E represents the drug from which an extract is to be made; or if the device is to be used as a filter, then E represents charcoal, sand, or any suitable filtering material.

I will describe my apparatus as employed in making fluid extracts. The container A is charged with any drug or substance, E, from which an extract is to be made. The drug E is charged into the container A through the enlarged mouth C. Now, by the ordinary process and mechanism for making fluid extracts it has heretofore been the practice to charge the menstruum into the large mouth C.

But this method made it impracticable to obtain any in-
333 creased or variable pressure upon the menstruum, unless a cap piece were fitted over the enlarged mouth C and a tube or its equivalent attached and connected either to an elevated reservoir containing the menstruum or else some special pressure apparatus connected with said tube.

All this in practice is impracticable; but by the employment of my device and method it is a very easy matter to charge the container A, and by applying the menstruum in exactly an opposite manner from that heretofore adopted, viz., to the end of the container A opposite the charging mouth C, to exert any desired pressure upon the menstruum.

Fig. 2 of the drawings illustrates my method and mechanism, which consists, after the container A is charged in the usual manner through its enlarged mouth C, as already specified, in inverting the percolator, attaching a flexible or other tube, F, to the constricted mouth B, and applying the menstruum through said tube from an elevated reservoir, G. When thus used the enlarged mouth C becomes the ultimate discharge, which has never before, to my knowledge, been true in any method heretofore known or practiced. By elevating the reservoir G more or less a greater or lighter pressure is exerted by the menstruum, and it is therefore driven through the drug more or less forcibly and rapidly. This pressure, as may readily be seen, can be nicely adjusted and varied at pleasure to suit the requirements of any case.

A stop-cock, H, may be used to govern the quantity of the menstruum admitted to the percolator A.

What I claim is—

[1st. A percolator constructed with a wide charging mouth and a constricted inlet, said constricted inlet being suitably fashioned to be attached to or connected with a hose or pipe, substantially as and for the purposes shown.

2d. The combination, with a percolator, of an elevated menstruum reservoir and a flexible or jointed tube, whereby the vertical

334 distance between said percolator and reservoir may be adjusted and varied to produce any desired static pressure by said menstruum, substantially as and for the purposes shown.]

MEMO.—The above in brackets erased with red line, and in margin, in red ink, the words "Erase and insert B, June 28, '81." A. H. D., Ex'r.

[3d. The combination of the percolator A, the flexible or jointed tube, and the menstruum reservoir, associated and adapted to operate substantially as and for the purpose specified.] Insert "A," per am'd't, June 22, '81.

MEMO.—The above in brackets erased with red line, and in margin, in red ink, the words "Erase per amendment, Sept. 29, 1881." A. H. H., Ex'r.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

NATHAN ROSENWASSER.

Witnesses:

JNO. CROWELL, JR.
ALBERT E. LYNCH.

UNITED STATES OF AMERICA.

STATE OF ——, COUNTY OF ——, } ss:
Northern District of Ohio, }

I, Nathan Rosenwasser, the above-named petitioner, being duly sworn, depose and say that I verily believe myself to be the original and first inventor of the improvements in percolators described in the foregoing specification; that I do not know or believe that the same was ever before known or used, and that I am a citizen of the United States and resident of Cleveland, Ohio; that the invention described and claimed in the annexed specification has not been patented to me or with my knowledge and consent in any foreign country, and that the invention has not, to my knowledge, been introduced into public use in the United States for more than two years prior to the filing of this application.

NATHAN ROSENWASSER.

335 Sworn to and subscribed before me this 27th day of April, 1881.

[L. S.] JNO. CROWELL, JR.,
United States Circuit Court Commissioner.

C 32398.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *June* 6, 1881.

Nathan Rosenwasser, care Leggett & Leggett, pres't.

Percolator for drugs, &c. Filed May 3, 1881.

A claim like applicant's first has not for many years been allowable.

The arrangement claimed has been long used for filters of all sorts. See patents of T. Tripp, Nov. 4, '79, No. 221,198; A. Fessenden, April 2, 1850, No. 7238; W. S. Fleming & A. Burns, May 8, '77, No. 190,569; J. H. Carter, Oct. 18, 1859, 25805—all in class of filters, water distribution.

Applicant's second claim is for the usual adaptation of hydrostatic pressure at different heights. He is doubtless well aware that the ordinary nasal douche is worked in just this way, and will not require a definite reference.

Perhaps a single very definite and exact claim may pass the several hundred filters already patented. See also patent of G. McPherson, April 27, '75, No. 162,673 (pharmaceutical).

A. G. WILKINSON, *Examiner.*

JUNE 20, 1881.

N. Rosenwasser. Percolators. Filed May 3, 1881.

Hon. Commissioner of Patents:

Insert the following claims:

[1st. The percolator consisting of the body A, having large
336 filling and discharge opening, C, at its lower end, a filtering diaphragm, D, adapted to be fitted into the lower end of the percolator, and having a tube. B, connected with its upper end, substantially as set forth.

2d. The method of filtering or making fluid extracts or decoctions, consisting in confining the substance or liquid in a receptacle having an enlarged orifice at its lower end and a constricted inlet at its upper end, and then subjecting the same to the desired static pressure of the menstruum, substantially as set forth.]

MEMO.—The above in brackets erased with red line, and in margin, in red ink, the words "Erase and insert 'C,' amendment, Oct. 11, 1881." A. H. D., Ex'r.

Respectfully, LEGGETT & LEGGETT, *Att'ys.*

The references have been carefully examined, but none of them appear to anticipate the invention or claims. Applicant fails to observe anything wrong in the first claim. It is restricted to a particular construction of percolator, and, as no references are cited to anticipate it, applicant fails to see why it is rejected.

Respectfully, LEGGETT & LEGGETT, *Att'ys.*

C 32398.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *June* 25, 1881.

N. Rosenwasser, care Leggett & Leggett, pres't.

Percolators. Filed May 3, 1881.

It is believed that the rejection of the former claims was well taken, in view of the references.

337 The two claims last filed seem to embrace and properly cover exactly what applicant has done.

A. G. WILKINSON, *Ex'r.*

In the United States Patent Office.

In re NATHAN ROSENWASSER'S Application for Patent Percolator for Drugs, etc. Filed May 3, 1881.

Hon. Commissioner of Pat's.

SIR: We amend this case by cancelling claims 1 and 2 and substituting therefor the following claims:

[1st. An apparatus for making fluid extracts and the like and for varying and regulating the pressure with which the menstruum is applied in said manufacture, said apparatus consisting of the combination, with a percolator, of an elevated menstruum reservoir and a flexible or jointed tube, whereby the vertical distance between said percolator and reservoir may be adjusted and varied to produce any desired static pressure by said menstruum, substantially as shown.]

[2d. A percolator constructed with a large mouth, C (through which the drug is charged into the chamber A), and a small inlet, B, located behind or opposite to said mouth C, for the admission of the menstruum, substantially as and for the purposes shown.]

MEMO.—The above in brackets erased with red line, and in margin, in red ink, the words "Erased per amendment, Sept. 29, 1881." A. H. D., Ex'r.

Respectfully, etc., LEGGETT & LEGGETT.

338 In the United States Patent Office.

In re NATHAN ROSENWASSER'S Application for Patent Percolator for Drugs, etc. Filed May 3, 1881.

Hon. Commissioner of Pat's.

SIR: We herewith submit an amendment to the above-named application, and, believing that none of the references thus far cited anticipate the claims now sought, we respectfully ask their allowance.

It will be admitted that the second and third claims is for a specific combination of definite elements, and none of the references

thus far cited show these elements combined as applicant specifies and claims.

The same may be said of the first claim.

The allusion made to the nasal douche we cannot consider as a sufficient objection to the allowance of applicant's claims. Applicant is not attempting to claim broadly an apparatus for producing a variable static pressure, for it will be observed that a percolator enters as a prime element into each claim, and a nasal douche neither contains that element nor does it appear to suggest the idea embodied in applicant's invention.

Heretofore it has always been the practice, in making fluid extracts (where an extra or variable pressure upon the menstruum was important), to employ more or less complex apparatus for applying the menstruum at any desired pressure.

The construction of apparatus has heretofore been such that this complicated mechanism was made necessary, and applicant by his invention has, as it plainly appears, overcome these difficulties.

We do not dispute the fact that he has employed well-known principles, but his invention and apparatus embodies certain elements that do not appear to have ever been combined as he combines them prior to his application.

In view of the fact that there are no references adduced that in reality show applicant's apparatus to be old, there would at
339 least seem to be a doubt as to the propriety of rejecting his present claims; and in such cases where such a doubt might arise we believe that the best practice of the Patent Office favors the resolution of such a doubt in favor of the applicant and the allowance of his claims, leaving any nice questions to be settled, if necessary, by the courts.

We therefore respectfully ask an allowance of applicant's present claims, unless additional and more pertinent references can be adduced.

Respectfully, etc., LEGGETT & LEGGETT.

C 32398.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Sept.* 14, 1881.

Nathan Rosenwasser, care Leggett & Leggett.

Percolator. Filed May 3, 1881.

This application should have received action early — July, but the clerk placed the amended file in the wrong place.

There seems to be some grave misapprehensions on the part of the inventor in regard to the state of the art, as the examiner knows it and supposed it to be shown in the references. If applicant will consult the Am. Jour. of Pharmacy, vol. 51, 1879, p. 72, he will see the common form of regulating the liquid pressure by raising and lowering the containing vessel, which is connected to the percolator

proper by a flexible tube. In Parish's Pharmacy, p. 129, pp. 118 and 119, he will see the diaphragms in a percolator of exactly the shape he shows. It will therefore be seen that applicant simply inverts his percolator—no more, no less. With these references applicant's 5th claim becomes a claim for using a device not only claimed in other claims, but shown to be old.

340 The office in this case is very glad to solve even the smallest doubts in the inventor's favor, and a single definite claim to applicant's exact construction will be at once allowed, for, as he will readily see, it must be an exceedingly limited one.

The reference books are retained on the examiner's desk to facilitate consultation by the inventor.

A. G. WILKINSON, *Ex'r.*

WASHINGTON, D. C., *September* 27, 1881.

Nathan Rosenwasser. Percolators. Filed May 3, 1881.

Hon. Comm'r of Patents:

Erase the 1st, 2d, and 3d claims.

Respectfully, LEGGETT & LEGGETT, *Att'ys.*

We agree with the examiner in his statement in office letter of June 25, 1881, that the 4th and 5th claims express applicant's invention. The references show the well-known prior art, with the large filling mouth at the upper end and contracted discharge outlet at its lower end. Applicant is the first to employ a large filling and discharge opening at the lower end and a contracted opening at the upper end.

Respectfully, LEGGETT & LEGGETT, *Att'ys.*

C 32398.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Oct.* 5, 1881.

Nathan Rosenwasser, care Leggett & Leggett, pres't.

Percolators. Filed May 3, '81.

341 Applicant neglected to erase the 2d claim, which is merely for the use of the machine. The decisions upon this point are too well known, of course, to require citation.

The first claim should certainly include the flexible pipe for connection at varying heights with a liquid reservoir. Unless this be included the claim would be for a meaningless and purposeless change of ends in a well-known apparatus. There is not the slightest disposition to curtail applicant in the protection of his invention, but it is not of a magnitude to carry broad claims.

A. G. WILKINSON, *Ex'r.*

WASHINGTON, D. C., *October* 10, 1881.

Nathan Rosenwasser. Percolators. Filed May 3, 1881.

Hon. Comm'r of Patents:

Erase all the claims and insert as follows:

[1st. A percolator consisting of a container having a large filling and discharge opening at its lower end and a restricted opening at its upper end, through which pressure is transmitted to the substance or liquid within the percolator, substantially as set forth.

2d. A percolator consisting of a container having a large filling and discharge opening at its lower end and a restricted opening at its upper end, through which pressure is transmitted to the liquid or substance to be treated, and provided with a diaphragm fitting within its lower end, substantially as set forth.

3d. The combination, with a percolator constructed with a large filling and discharge opening at its lower end and restricted opening at its upper end, of a reservoir and a vertically adjustable conduit connecting the reservoir and the upper end of the percolator, substantially as set forth.]

342 MEMO.—The above in brackets erased with red line, and in margin, in red ink, the words "Erase and insert D, amend't Dec. 14, 1881." A. H. D., Ex'r.

Respectfully, LEGGETT & LEGGETT, *Att'ys.*

Applicant should not be called upon to limit himself to the employment of a rubber tube with the percolator.

The percolator is new; it is a decided and obvious improvement on anything that can be found, and applicant is entitled to protection by a claim on its construction.

Three new claims are now presented. It is believed that a shadow of doubt should not exist in the mind of the examiner as to the patentability of every one of the claims. Should the examiner still adhere to his position that applicant is only entitled to narrow and restricted claims, it is requested that he will finally reject the claims, giving his references of rejection for each claim rejected.

Respectfully, LEGGETT & LEGGETT, *Att'ys.*

C 32398.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Oct.* 18, 1881.

N. Rosenwasser, care Leggett & Leggett, pres't.

Percolator. Filed May 3, '81.

The office is forced to repeat rejections, inasmuch as applicant is so persistent in claiming broadly what the state of the art shows to be old.

Applicant's first claim is untenable, first, because without the diaphragm it is an entirely useless device.

No possible way has been shown in which it can be used
343 without said diaphragm. This claim is pure and simple to a funnel inverted.

Secondly, this claim, as well as the second, is met by pat's of McCauley & Cady, Aug. 24th, '80, 231,494; D. N. B. Coffin, Sept. 2d, '56, 15646; Geo. Curtis, Nov. 29, '70, 109,592, in class of filters, water distribution, and many others. Until applicant uses his hydrostatic pressure, as claimed in last claim, his device merely inverts pp. 118 and 119, p. 128 of Parish Pharmacy.

A. G. WILKINSON, *Ex'r.*

WASHINGTON, D. C., *December* 12, 1881.

Nathan Rosenwasser. Percolators. Filed May 3, 1881.

Hon. Comm'r of Patents:

Erase all the claims and insert as follows:

[The combination, with a vessel, G, and adjustable tube F, of a percolator; A, having a large filling and discharge orifice at its lower end and a restricted opening, B, at its upper end, with which connects the lower end of the adjustable tube or pipe F, substantially as set forth.]

MEMO.—The above in brackets inclosed with red line, and in margin, in red ink, the letter "D." A. H. D., Ex'r.]

LEGGETT & LEGGETT, *Att'ys.*

Serial No. 32398.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OEFICE,
WASHINGTON, D. C., *Dec.* 16, 1881.

Nathan Rosenwasser, care Leggett & Leggett, city.

SIR: Your application for a patent for an improvement in percolators, filed May 3, 1881, has been examined and allowed.
344 The final fee, twenty dollars, must be paid and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 497, Revised Statutes. The office aims to deliver patents upon the day of their date and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees at least twenty days prior to the conclusion of the six months allowed them by law. The printing, photolithographing and engrossing of the several patent parts preparatory to final signing and sealing will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention as

above given, date of allowance (which is the date of this circular,) date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully, V. D. STOCKBRIDGE,
Commissioner of Patents.

The within title is that given by the examiner in charge as most appropriate to your invention. Should you desire a change in the same satisfactory reasons must be given therefor on or before the payment of the final fee.

345 ☞In remitting the final fee give the serial number at the head of this notice.

WASHINGTON, D. C., *December* 28, 1881.

Nathan Rosenwasser. Percolator. Filed May 3, 1881.

Hon. Comm'r of Patents.

SIR: We respectfully ask permission to withdraw this case from issue and to have the same remanded to the examiner for his consideration of the following additional claim:

[2d. A percolator consisting of a container having a large filling and discharge opening at its lower end and a restricted opening at its upper end through which pressure is transmitted to the liquid or substance to be treated, and provided with an adjustable diaphragm fitting within its lower end, substantially as set forth.]

MEMO.—The above in brackets erased with red line and in margin, in red ink, the words "E, per amendment February 15, 1882." A. H. D., Ex'r.

Respectfully submitted,
LEGGETT & LEGGETT, *Att'ys.*

This is recommended.
A. G. WILKINSON, *Ex'r.*

App'd.
V. D. STOCKBRIDGE, *A. C.*

Withdrawn Dec. 31, '81.
J. W. B.

C 32398.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *Jan.* 5, 1881.

Nathan Rosenwasser, care Leggett & Leggett, pres't.

Percolators. Filed May 3, 1881.

The examiner is unable to find anything about an adjustable diaphragm either in specification or drawing.

346 Will the applicant state upon what he relies to carry the new claim for the diaphragm being adjustable, as something possibly may have escaped the examiner's notice?

A. G. WILKINSGN, *Ex'r.*

Serial No. 32398.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Feb.* 21, 1882.

Nathan Rosenwasser, care Leggett & L., city.

SIR: Your application for a patent for an improvement in percolators, filed May 3, 1881, has been examined and allowed.

The final fee, twenty dollars, must be paid and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 497, Revised Statutes. The office aims to deliver patents upon the day of their date and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees at least twenty days prior to the conclusion of the six months allowed them by law. The printing, photolithographing, and engrossing of the several patent parts preparatory to final signing and sealing will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention as above given, date of allowance (which is the date of this circular), date of filing, and, if assigned, the names of the assignees.

347 If you desire to have the patent issue to assignees an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully,

E. M. MARBLE,
Commissioner of Patents.

The within title is that given by the examiner in charge as most appropriate to your invention. Should you desire a change in the same satisfactory reasons must be given therefor on or before the payment of the final fee.

☞ In remitting the final fee give the serial number at the head of this notice.

WASHINGTON, D. C., *Feb.* 15, 1882.

Nathan Rosenwasser. Percolator. Filed May 3, 1881.

Hon. Comm'r of Patents.

SIR: Erase the 2d claim.

Yours resp'y, LEGGETT & LEGGET, *Attorneys.*

Memorandum of Fee Paid at U. S. Patent Office.

Serial No. 32398. 1882.

Inventor, Nathan Rosenwasser.
Patent to be issued to inventor.
348 Name of invention as allowed, percolators.
Date of payment, March 25, 1882.
Fee, final fee, $20.
Solicitors, Leggett & Leggett.
Date of filing, May 3, 1881.
Date of circular of allowance, Feb. 21, 1882.
Send patent to M. D. Leggett & Co., Cleveland, Ohio.

Serial No. 32398. Ex'r Book No. 221$\frac{1}{6}$. 1881.

Patent No. 256,504. Nathan Rosenwasser, of Cleveland, county of Cuyahoga, State of Ohio.
Invention, percolators.
Parts of application filed:
Petition, May 3, 1881.
Affidavit, " " "
Specification, " " "
Drawing, " " "
Model, none required.
Specimen.
First fee, cash, $15, May 3, 1881.
" " cert.
App. filed complete May 3, 1881.
February 20, '82. A. G. Wilkinson.
Examined Dec. 15, 1881. A. G. Wilkinson.
Countersigned Dec. 16, 1881. J. W. Babson, for Commissioner.
Countersigned Feb. 21, 1882. J. W. Babson.
Notice of allowance, Dec. 16, 1881.
" " " Feb'y 21, 1882.
Final fee, cash, $20, M'ch 25, '82.
" " cert.
Patented April 18, 1882.
Att'y or P. O. address, Leggett & Leggett, present.

1881.

349 *Contents.*

Application, 1 paper.
1. Rej. 1, June 6, 1881.
2. Amendment, June 22, 1881.
3. Rej. 11, June 25, 1881.
4. Amendment, June 28, 1881.
5. Argument, June 28, 1881.
6. Rej. 11, Sept. 14, 1881.
7. Amendment, Sept. 29, 1881.
8. Rej. 11, Oct. 5, 1881.
9. Amend't and arg'm't, Oct. 11, 1881.
10. Rej. 11, Oct. 18, 1881.
11. Amendment, Dec. 14, 1881.
12. Amendment, Dec. 29, 1881.
13. Rej., Jan. 5, 1882.
14. Amendment, Feb'y 15, 1882.

Title, improvement in Percolators.

UNITED STATES PATENT OFFICE.

NATHAN ROSENWASSER, of Cleveland, Ohio.

Percolator.

Specification forming part of Letters Patent No. 256,504, dated April 18, 1882. Application filed May 3, 1881. (No model.)

To all whom it may concern:

Be it known that I, Nathan Rosenwasser, of Cleveland, in the county of Cuyahoga and State of Ohio, have invented certain new and useful improvements in percolators; and I do hereby de-
350 clare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it pertains to make and use it, reference being had to the accompanying drawings, which form part of this specification.

My invention relates to percolating apparatus to be employed for filtering purposes or for making fluid extracts or decoctions; and it consists in a device constructed and adapted to operate substantially in the manner hereinafter specified.

In the drawings, figure 1 represents my device in longitudinal section, and Fig. 2 shows the application of said device when used as a filter or in making fluid extracts.

A is the main body of my percolator.

B is a constricted inlet.

C is the enlarged open end, which serves the double purpose of a discharge or outlet and as an opening through which the percolator is charged with filtering substance when the device is to be used as a filter or with any drug from which an extract is to be made.

D is a perforated plate. This plate may, if desired, be replaced

by any porous diaphragm or interposing substance, such as filter paper, cloth, pumice, or the like. This is to prevent the drug from escaping from the percolator during its use, and it is to be secured in position by suitable means.

E represents the drug from which an extract is to be made; or, if the device is to be used as a filter, then E represents charcoal, sand, or any suitable filtering material.

I will describe my apparatus as employed in making fluid extracts.

The container A is charged with any drug or substance, E, from which an extract is to be made. The drug E is charged into the container A through the enlarged mouth C. Now, by the ordinary process and mechanism for making fluid extracts it has here-
351 fore been the practice to charge the menstruum into the large mouth C; but this method made it impracticable to obtain any increased or variable pressure upon the menstruum unless a cap piece were fitted over the enlarged mouth C and a tube of its equivalent attached and connected either to an elevated reservoir containing the menstruum or else some special pressure apparatus connected with said tube. All this in practice is impracticable; but, by the employment of my device and method, it is a very easy matter to charge the container A, and by applying the menstruum in exactly an opposite manner from that heretofore adopted, viz., to the end of the container A opposite the charging mouth C, to exert any desired pressure upon the menstruum.

Fig. 2 of the drawings illustrates my method and mechanism, which consists, after the container A is charged in the usual manner through its enlarged mouth C, as already specified, in inverting the percolator, attaching a flexible or other tube, F, to the constricted mouth B, and applying the menstruum through said tube from an elevated reservoir, G. When thus used the enlarged mouth C becomes the ultimate discharge, which has never before, to my knowledge, been true in any method heretofore known or practiced. By elevating the reservoir G more or less a greater or lighter pressure is exerted by the menstruum, and it is therefore driven through the drug more or less forcibly and rapidly. This pressure, as may readily be seen, can be nicely adjusted and varied at pleasure to suit the requirements of any case.

A stop-cock, H, may be used to govern the quantity of the menstruum admitted to the percolator A.

What I claim is—

The combination, with a vessel, G, and adjustable tube F, of a percolator, A, having a large filling and discharge orifice at its lower end and a restricted opening, B, at its upper end, with which connects the lower end of the adjustable tube or pipe F, substantially as set forth.

352 In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

NATHAN ROSENWASSER.

Witnesses:

JNO. CROWELL, JR.

ALBERT E. LYNCH.

It is agreed that all exhibits introduced into this cause and referred to in this record, whether printed or not, may be used in evidence by either party at the hearing of this cause.

And said cause is further continued until the present term, when the same came on to be heard before Colt, circuit J., and on the seventeenth day of January, A. D. eighteen hundred and eighty-five, was passed and entered the following

Final Decree.

Circuit Court of the United States, District of Maine. September Term, A. D. 1885. In Equity.

353 NATHAN ROSENWASSER and JENNIE A. SPIETH, Complainants,

—

JOHN BERRY, Defendant.

This cause came on to be heard at the September term, A. D. 1884, upon the pleadings and proofs, and was argued by counsel for the respective parties, viz., by William Henry Clifford, Esquire, for the complainants, and Wilbur F. Lunt, Esquire, for the defendant; and thereupon, upon consideration thereof, to wit, January 17, A. D. 1885, it is ordered, adjudged, and decreed as follows, viz:

That the letters patent referred to in the complainants' bill, being letters patent of the United States granted unto Nathan Rosenwasser for a percolator, numbered 256,504, dated April 18, 1882, is not a good and valid patent, and that the said Nathan Rosenwasser is not the original and first inventor of the improvement described
354 and claimed therein, and that the said defendant has not infringed the said patent and upon the exclusive rights of the complainants under the same.

And it is further ordered, adjudged, and decreed that the complainants' bill be dismissed.

And it is further ordered, adjudged, and decreed that the defendant recover of the complainant his costs of suit, taxed at three hundred fifty-five dollars and four cents ($355.04).

And on the 16th day of February, A. D. 1885, the complainants claim an appeal, by entry on the docket, to the Supreme Court of the United States, and on the 9th day of October, in the same year, file the following

Appeal.

Circuit Court of the United States, District of Maine. In Equity.

355 NATHAN ROSENWASSER *et al. v.* JOHN BERRY.

To the honorable justices of the Supreme Court of the United States:

The appeal of Nathan Rosenwasser *et al.*, complainants and appellants above named, respectfully showeth—

That on the 23d day of Feb., A. D. 1883, the above-named com-

plainants filed their bill in the circuit court of the United States, in the first circuit and district of Maine, against the above-named John Berry, praying for an injunction against the said respondent restraining him from the further infringement of certain letters patent of the United States, of date April 18, A. D. 1882, No. 256,504, upon percolators, granted to the said Nathan Rosenwasser and owned by the said complainants, and for an account, and alleging in effect that the said invention was a new and useful invention; that it was
356 the property of the complainants, and that the respondent, in the district of Maine, had infringed upon the rights of the owners of the said patent by making, using, and vending to others to be used, the said invention without the license or consent of the complainants, to the great injury and damage of the complainants, but to what amount the complainants were ignorant, and prayed that the respondent might be ordered to account for and pay over to the complainants the profits that had accrued to him by reason of such sales, as well as the damages arising to the complainants therefrom; that subpœnas having been issued to said respondent, he appeared in said suit and answered to said bill, denying in substance and effect the complainants' exclusive right to make, use, and vend to others to be used, the invention described and claimed in the letters patent referred to and the validity of the said patent, and denying that the respondent had infringed the patent or ex-
357 clusive rights of any of the complainants, and denying the novelty and usefulness of the invention described and claimed in said patent, and praying for a dismissal of said bill; and thereupon the complainants filed their general replication to said answer; that evidence and proofs were taken on both sides, and that said circuit court, on the 17th day of January, A. D. 1885, on the pleadings, proofs, and arguments of counsel on both sides in said suit, made and pronounced a final judgment and decree in said suit dismissing said bill with costs. Wherefore these appellants appeal from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of said court and the bill, answer, and all the pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court
358 will proceed to hear the cause anew, and that the said decree of the said circuit court and every part thereof be reversed and a decree made according to the prayer in said bill with costs, or such other decree as to the Supreme Court of the United States shall seem just.

Dated the twenty-first day of September, at —— aforesaid, A. D. 1885.

WILLIAM HENRY CLIFFORD,
Solicitor and Counsel for the Complainants.

On reading and filing the above petition of appeal, with a bond for costs, ordered that appeal be allowed.

Oct. 9, 1885, Portland.

LE BARON B. COLT,
U. S. Circuit Judge.

And on the 10th day of said October, A. D. 1885, is filed the following

Bond.

359 Know all men by these presents that we, Nathan Rosenwasser and Jennie A. Spieth, of Cleveland, in the State of Ohio, *and* as principals, and E. S. Everett and H. B. Pennell, of Portland, Maine, as sureties, are held and firmly bound unto John Berry, of Biddeford, county of York, and State of Maine, in the full and just sum of two hundred and fifty dollars, to be paid to the said John Berry, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-first day of September, in the year of our Lord one thousand eight hundred and eighty-five.

360 Whereas lately at a certain term for the first circuit and district of Maine, in a suit depending in said court between Nathan Rosenwasser *et al.* and John Berry, a judgment and decree was rendered against the said Nathan Rosenwasser *et al.*, and the said Nathan Rosenwasser *et al.* having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said judgment and decree in the aforesaid suit, and a citation directed to the said John Berry, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Nathan Rosenwasser *et al.* shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

NATHAN ROSENWASSER. [L. S.]
JENNIE A. SPIETH. [L. S.]
E. S. EVERETT. [L. S.]
H. B. PENNELL. [L. S.]

Sealed and delivered in presence of—

CHARLES W. BENFIELD.
WM. F. SPIETH.
GEO. W. THOMPSON
To Everett and Pennell.

Approved by—

N. WEBB, *Dist. Judge.*

361 *Authentication.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Maine.

I, A. H. Davis, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing printed and written pages (numbered from 1 to 360, inclusive) are a full, true, and correct transcript of the record and proceedings in the cause, Nathan Rosenwasser *et al. vs.* John Berry, therein named, as the same appears of record and on file in my office.

Witness my hand and the seal of said court this 12th day of October, A. D. 1885.

[Seal of the Circuit Court, Maine.]

A. H. DAVIS, *Clerk.*

362 *Opinion of the Court. Filed January* 17, 1885.

Circuit Court of the United States, District of Maine. In Equity.

NATHAN ROSENWASSER *et al.*
v.
JOHN BERRY. } No. 311.

COLT, *J.:*

This suit is brought for an alleged infringement of letters patent No. 256,504, granted to Nathan Rosenwasser April 18, 1882, for improvements in percolators for filtering purposes or making fluid extracts from drugs.

Percolators are old. The main elements described in the Rosenwasser patent, consisting of an elevated reservoir or vessel, a lower vessel containing a perforated plate or diaphragm on which the drug rests, and a tube or pipe connecting the two vessels, are old.

363 In the old percolators the lower vessel is often made in the shape of a funnel, and the drug is charged at the wide opening on top. A cap piece may then be put on, which connects with the tube or pipe attached to the reservoir. The discharge takes place through the restricted opening at the bottom. Rosenwasser inverts this funnel-shaped vessel, and then charges the drug through the wide opening at the bottom, through which the discharge also takes place.

In filling, the wide open end is turned upwards and the drug put in. A diaphragm is then inserted, on which the drug rests. The large end is then turned downwards and percolation begins. By this means, as set out in the specification, the upper part of the percolating vessel is closed, so that any increased or variable degree of pressure can be brought to bear on the menstruum, depending on the elevation of the reservoir.

The claim is as follows:

"The combination, with a vessel, G, and adjustable tube F, of a percolator, A, having a large filling and discharging orifice at its lower end and a restricted opening, B, at its upper end, with which connects the lower end of the adjustable tube or pipe F, substantially as set forth."

It will be observed that the claim omits to include a diaphragm as an element of the combination. A diaphragm is necessary to prevent the drug falling out from the opening at the lower end of the vessel. A diaphragm, however, is described in the speci-
364 fication and seen in the drawings. The plaintiffs contend that consequently it is made a part of the claim by legal construction. If we should adopt this view it is still extremely doubtful if the machine is operative without the use of a second diaphragm, which is nowhere mentioned in the patent. When the large open end of the lower vessel is turned upwards for the purpose of filling it would seem evident that a portion of the drug will fall out of the small opening at the other end unless there is another diaphragm to prevent it. It is possible that the drug may be so coarse or the opening so small that but little, if any, will escape. Practically, however, we think the evidence shows that two diaphragms are a necessity. It is a most significant fact that the percolators sold by the complainants have two diaphragms.

But in view of the prior state of the art we fail to find any invention in the Rosenwasser patent. The most that Rosenwasser can claim is an improvement which consists in closing the upper part of the vessel containing the drug, by which means an increased or variable pressure can be brought to bear upon the menstruum, this result being accomplished by making the large open end at the bottom of the vessel the charging and discharging mouth. That this is the scope of the improvement is apparent on reading the patent. No claim is made in the patent for an adjustable diaphragm. If Rosenwasser had been the first to close the upper part of the percolating vessel he might lay claim to an invention, but we find a vessel air-tight at the upper end described in Boullay's filter or
365 percolator, United States Dispensatory, by Wood & Bache, 13th ed., 1870, p. 932, and in the Real press, described in Geiger's Handbuch der Pharmacie, published in 1830, vol. I, p. 157.

The invention of Rosenwasser narrows itself down to the mode of charging the drug. Instead of filling the drug from the top of the percolating vessel and then inserting a diaphragm he turns the bottom of the vessel upwards, fills in the drug, inserts the diaphragm, and then turns the vessel back. To fill a vessel from the bottom instead of from the top does not seem to me to constitute invention. The design of the patent laws is to reward those who make some substantial discovery or invention which adds to our knowledge in the useful arts. Atlantic Works *v.* Brady, 107 U. S., 192. Not every improvement is invention, but to entitle a thing to protection it must be the product of some exercise of the inventive faculties, and it must involve something more than what is obvious to persons

skilled in the art to which it relates. Pearce *v.* Mulford, 102 U. S., 112.

These considerations are independent of the fact that in Beindorf's device, described in Geiger's work, *supra*, it appears that the percolating cylinder was inverted after filling. We do not think the complainants show the translation from Geiger introduced by the defendant to be incorrect. At all events, it may be said that the cylinder in the device of Beindorf might be charged from the lower end. There is also considerable evidence going to prove that
366 a perculator embodying the Rosenwasser patent was used by one Nietsch in New York as early as 1873, and by the defendant Berry in 1878 in his shop, at Biddeford, Maine. In view of the other conclusions we have reached it becomes unnecessary to decide whether this last defence has been proved. The bill must be dismissed, and it is so ordered.

A true copy.

[Seal of the Circuit Court, Maine.]

Attest: A. H. DAVIS, *Clerk.*

367 The United States of America to John Berry, of Biddeford, in the district of Maine, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Maine, wherein Nathan Rosenwasser and Jennie A. Spieth, citizens of Cleveland, in the county of Cuyahoga and State of Ohio, are appellants and you are defendant, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal is mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Nathan Webb, judge of the district court of the United States for the district of Maine, this tenth day of October, in the year of our Lord one thousand eight hundred and eighty-five.

NATHAN WEBB,
District Judge.

368 [Endorsed:] Rosenwasser *et al. v.* Berry. Citation.

On this — day of ——, in the year of our Lord one thousand eight hundred and eighty—, personally appeared —— —— before me, the subscriber, —— ——, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — ——, A. D. 188–.

—— ——.

DISTRICT OF MAINE, *ss:*

OCTOBER 10TH, 1885.

I hereby acknowledge due and legal service of the within citation.

JOHN BERRY,
By W. F. LUNT,
His Solicitor & Counsel.

Endorsed on cover: Maine C. C. U. S. No. 122. Nathan Rosenwasser and Jennie A. Spieth, appellants, *vs.* John Berry. Filed October 14, 1885.

Office Supreme Court U. S.
FILED.
DEC 6 1888
JAMES. H. McKENNEY.
CLERK.

Supreme Court of the United States.

IN EQUITY.

NATHAN ROSSENWASSER, ET AL.

v.

JOHN BERRY.

OCTOBER TERM, 1888.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE FIRST CIRCUIT AND DISTRICT OF MAINE.

BRIEF OF

WILLIAM HENRY CLIFFORD,

For Appellant.

Supreme Court of the United States.

October Term, 1888.

ROSENWASSER ET AL., *v.* BERRY.

IN EQUITY.

APPELLANTS' BRIEF.

Appeal from a decree in equity of the Circuit Court of the United States for the First Circuit and District of Maine.

The cause was a bill in equity, praying for an account and an injunction for the infringement of certain original letters patent on a percolator.

The complainants are the appellants.

The patent is numbered 256,504, and is dated April 18, 1882.

The subject-matter of the invention is well and fully described in the patent.

Rec. p. 14.

It consists of a main body A, a constricted inlet B, an enlarged open end C, and a removable, adjustable, perforated plate ~~K~~ D

This set of devices is to be used in combination with an elevated reservoir and a flexible tube, connecting the reservoir and the main body A. ~~See large sheet in Supplemental Brief~~

The reservoir contains the liquid or menstruum, which being suffered to flow down from the reservoir through the tube, enters the constricted inlet of the main body A, and there percolating through the drug resting on the perforated plate, carries with it through the perforated plate and into a receptacle below, the soluble properties of the drug, which it is the intention to extract.

The main body A is of peculiar construction and use.

It has the enlarged open end C. This enlarged open end serves both for the mouth through which to charge the vessel A, and for the exit of the extractive properties of the drug with their vehicle, the liquid. This open end also serves for the final discharge of the exhausted drug, i. e.: when the process of percolation has been finished.

The method of manipulating the main body A is also new. While the process of percolation is progressing, the enlarged open end C is downward, as seen in the drawing of the schedule annexed to the patent. Obviously this is to allow the extractive matters in their liquid form, to drip downwardly as they are separated from the fiber of the drug. So also is the open end held downwardly when the exhausted drug is poured out of it.

But when the main body A is first charged with the drug, preparatory to percolation, the vessel A is then held with the open end C *upwardly*. The drug is then placed into it against the fixed end or diaphragm, and the perforated plate D then placed *upon* the drug and there secured. Then the main body A is reversed so as to bring the open end C *downward*, and the percolation is begun.

~~See large sheet in Supplemental Brief~~

Thus we see that the invention consists of a vessel of a peculiar structure, when used and handled in a prescribed way.

The invention is for a percolating vessel having an enlarged or large opening C, a closed upper end with a constricted inlet B, a removable, adjustable, perforated diaphragm D; the said vessel to be used with the opening C upward for charging purposes, or when filling the vessel with a drug, and said end C to be the bottom when the process of percolation is going on, when the vessel is finally to be emptied of the exhausted or percolated drug. The diaphragm D is employed to *hold in* and keep in place, the drug in the vessel while percolation is going on. It is also employed to regulate pressure on the drug while it is being acted upon by the liquid or menstruum.

The advantages of the device, the arrangement of the parts, and the method of operation, are set forth in the patent and are not controverted.

Indeed, no controversy on the point of the usefulness of the invention could consistently take place, because the respondent's device operates in exactly the same way as that described and claimed in complainant's patent.

The cause came on to be argued in the Circuit Court of the United States for the First Circuit, Oct. Term, 1885.

The Court delivered an opinion ordering a decree dismissing the bill on the ground set forth in the opinion.

Record, p. 236.

From this decree the complainants appeal.

Assignment of Errors.

1. The Court erred in holding that it is doubtful if the complainants device is operative without a second diaphragm.

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Record, p. 236.

From this decree the complainants appeal.

Assignment of Errors.

1. The Court erred in holding that it is doubtful if the complainants device is operative without a second diaphragm.

2. The Court erred in finding that in view of the state of the art there was lack of invention in the device described and claimed in the Rossenwasser invention.

3. The Court erred in deciding that the scope of complainants' invention was closing the upper part of the vessel containing the drug, and making the large open end at the bottom the charging and discharging mouth.

4. The Court erred in holding that the closed upper end of a percolator, such as shown in the Rossenwasser patent, was shown in Boullay's Filter and in the Realsche Presse referred to in the opinion.

5. The Court erred in its definition of the nature and extent of the Rossenwasser invention.

6. The Court erred in deciding that although the device in Geiger's Pharmacy was inverted after filling, and because it might be charged from the lower end, was an anticipation of complainants' invention.

7. The Court erred in determining that Rossenwasser was not the original and first inventor of the device described and claimed in the patent referred to in the bill.

9. The Court erred in deciding that the alleged invention was fully and completely and exactly described in the printed works cited in the answer.

10. The Court erred in ordering the decree to be entered in favor of the respondent.

Infringement.

Upon the question of infringement or the similarity of the respondent's and the complainants' devices, it is hardly necessary to say much. Their exact resemblance is apparent upon

inspection. It is not anticipated that upon this point there will be much controversy.

In the respondent's device, Exhibit G, an additional diaphragm is interposed at the closed end. But this is merely a substitute for the fixed end of the main body A in the complainants' device. It serves the same purposes. It admits the liquid in upon the drug and aids to keep it compressed and in position while percolation is going on.

The respondent's device shows also a right and left screw to hold the two diaphragms in place. But this also is unimportant.

The respondent's device exhibits a main body with a large filling and discharge orifice, a constricted inlet for the liquid, and a perforated plate to hold the drug in place and allow the liquor to run down through it. Furthermore, it is charged with the large end upward, and percolates and discharges with the same end downward, exactly as the complainants' does. In other words, it is used in exactly the same way.

The respondent cannot escape the charge of infringement of our invention by merely saying that he uses it, but adds something to it. We care nothing for his additions, but he must be accountable to us for the use of that part of his device which is our invention.

Lee v. Blandy, 2 *Fish.* 93.
Howes v. Nute, 4 *Cliff.* 173.

A most important portion of the invention of the complainant is the manner in which he provides for his percolator to be used.

The vessel is held in the hand, with the enlarged open end up, in order to charge the same with the drug to be extracted. The drug is packed or placed upon the diaphragm forming the

upper end of the device and having the constricted inlet. When the requisite quantity of the drug has been introduced, the perforated plate or diaphragm is placed upon it and secured. The percolator is then reversed so that the open end comes down and the end with the constricted inlet uppermost. The menstruum is then permitted to flow into the vessel and percolation begins.

When the properties of the drug have been exhausted, the open end also serves, by the removal of the perforated diaphragm, for the discharge end for the drug.

It will also be seen that the perforated plate or diaphragm D is made to enter within the cylinder or main body, so as to be adjustable therein and to regulate pressure upon the drug. Also so as to accommodate its position to the different quantities of the drug that may be placed within the main body for percolation.

The method of manipulating the cylinder, as above described, in connection with the removable and adjustable plate D, will be found, I think, the novel features of the device.

The adjustable plate D is not named in the claim, but being necessary and clearly described, both as to structure and function, it is a part of the claim under the rule below cited.

~~See page 3, the 8th Supplemental Brief of Record herein~~

Necessary parts, left out of the claim, but if well described, are supplied by legal construction.

Kittle v. Merriam, 2 *Cur. Rep.* 479.
10 *Mo. Law Rep.*, 665.
Richardson, 7 *Off. Gaz.*, 1053.
Wheeler v. Mowing Co., 2 *Off. Gaz.* 442.
Stover v. Halsted, 8 *Fish*, 558–9.

This plate D in connection with *the manner of using* the percolator, and its having the open end for the final discharge ori-

fice, *in combination*, constitute the invention, and will be found to be new and patentable, when the defence set up in the answer is understood.

The only defence to the bill that I shall find it necessary to notice at length is the one directed to the novelty of the invention, the subject matter of the complainant's Patent.

The Defence has Three Branches.

FIRST.

That a device like that embraced in the patent of the complainants was described in a German publication in 1830, called "Handbuch der Pharmacie von Dr. Phillip Lorenz Geiger."

The two translations of this work relied on by the respondents, are to be found on pp. 212 and 213. 215 of the Record

That on p. 212 is made by the complainants.

That on p. 215 is made by the respondent.

Which of these two is more reliable and literal is one of the important questions in the cases.

SECOND.

The second branch of this defence is to the effect that a device like that described and claimed in complainants' patent was known to Adolph F. W. Neitsch, in New York City, more than ten years prior to 1883.

Respondent's evidence on this point is to be found on *pp.* 57 *to* 65 *of the Record.*

Complainants' evidence in reply is to be found on *pp.* 119 *to* 129 *of the Record.*

THIRD.

The third branch of this defence is to the effect that a device like that patented to the complainants was used by the respondent himself in 1878, at Biddeford, Maine.

Respondent's evidence on this point is to be found on the following pp. of the Record :—

p. 40. [*Respondent's own evidence*].
p. 617 *ans.* 26.
p. 67 *ans.* 27 *to* 32.
pp. 72 *to* 74.
pp. 75 *to* 79.
pp. 79 *to* 83.

Complainant's reply to this is on the Record :

pp. 161 to 186. also pp 29, 30, 31 and pp 211, 212.

First Branch.

I will now take up the first branch of the defence, viz. : that a device like that described and claimed in complainants' patent was described in the German publication referred to in 1830.

Some important differences exist between the translations presented, one by the complainant and the other by the respondent. But I will first take up the translation offered by the respondent, to show that it does not cover the complainants' invention even as there presented.

But let me call attention in the first place to the manner in which respondent's translation [p. 215] gets into the case :—

A person by the name of Hieppe *seems* to have signed his name to it. But he is not produced to swear to it or to be cross-examined.

We know therefore absolutely nothing of his qualifications as an interpreter.

Then a person by the name of Neitsch [*p.* ~~517~~ 57 *of the Record*] is introduced to testify that the alleged Hieppe translation is a correct one.

He appears in the case in a double capacity. He is a man who says he has used a percolator like complainants', years ago, and he is the collaborateur of the unseen Hieppe to swear this translation into the case.

Neitsch is a German apothecary in New York, and his qualifications appear from this admission.

81. Have you ever, previous to this time, attempted the translation of German books into English, or extracts therefrom, to be used for legal purposes?
Ans. No, sir.

82. Are there not a considerable number of English words, such as have occurred in the progress of this examination, of whose meaning you are more or less uncertain.
Ans. There was a few, and I asked for an explanation to see if I was right.

83. Do you profess to have an exact and extensive knowledge of the English — its idioms, grammar and phrases?
Ans. Yes — as far as common goes — not as to law technalities.

84. You are familiar with English of common discourse, are you not?
Ans. Yes, sir.

85. And you do not intend to say that your knowledge of the language extends beyond colloquial English, do you?
Ans. No, sir.

Upon this foundation the translation offered by the respondents was attempted to be made evidence.

It stands objected to.

I will now, however, consider the respondent's translation as

it appears by itself and as expounded by respondent's expert witness.

It is to be observed that the device is called a *Press*.

The translation covers three distinct devices, or modifications.

Of the first the description is exceedingly meager.

The first description covers a cylinder which may be open at both ends. It is provided with the perforated plates which contain the substance to be exhausted, between them. After the substance is so placed, the menstruum is admitted to flow through it, to carry off the soluble properties of the drug. The description also says that the vessel may have a cover with a hole in the center into which a long tube is fitted. This tube is to conduct the menstruum to the vessel containing the drug.

Here we have the description of a very simple device, viz.: a cylinder having two perforated plates within it. Between these two plates the drug is placed and held. A cover is then put on the top end. This cover has a long tube to conduct the water or other menstruum to the drug.

It is immediately apparent that this falls far short of a description of the Rosenwasser invention.

There is no allusion in the remotest degree to the large filling and discharge end. There is no allusion in the remotest degree to the turning of the large open end upward, for the purpose of charging or filling the percolator, or of reversing it when thus filled, in order that the process of percolation might go on.

Indeed the language employed [pp. 215, 216, first paragraph], excludes the idea of such a manipulation. The cylinder being open at both ends and having a removable cover, would be naturally charged in this way, viz.:—

One perforated plate would be put in at the open top end. The drug would then be put in on that plate. Then the other perforated plate put in, and then the cover put on.

But it is enough to see in answer to this part of the description, that it contains no allusion whatever to the method of handling the device described in the Rossenwasser patent, or to the enlarged open end which serves both as a filling and discharging orifice.

A description in a published work, to anticipate a patent, must be full, clear and exact, so as to reach the clearness of a patent specification.

Seymour v. Osborne, 11 *Wall*, 555.

Cohn v. U. S. Corset Co., 93 *U. S.* 370.

Such description must be clear without any aid or light FROM THE PATENT AS AN ANTICIPATION TO WHICH IT IS OFFERED.

The second form of a press, set out in this extract [pp. 326, 327], consists of a vessel having a bottom provided with a hole in such a manner as to form a hollow plug about one inch long. On this bottom pieces of wood are placed. On these the perforated plate is laid. Then a cloth is placed on the perforated plate. Then the drug is placed on the cloth. Then the drug is covered with a second cloth and a second perforated plate. Then follows a description of the devices to keep the plates in place. First wooden supports of different lengths are suggested. Then a cylinder of tin, fitting into the first cylinder and pushed up into it, so as to keep the second perforated plate pressed down on to the drug. There follows from this the method of fastening the inside cylinder to the outside one. All this is very plain and simple.

But there is not in all this [pp. 215, 216] the slightest intimation of a inveritable vessel, turned one way while being filled or

charged, and then reversed while the percolation is going on, the open end forming alike the charging and discharging orifice.

The third form of device described in this extract is one alleged to have been made by one Beindorf.

This adds to the former specification, a chair or table on which the press is supported. It states that the cover or seat of the chair is "*movable.*" so that by turning the press it can be filled and connected with the tube. It then goes on to say that "THE FILLED CYLINDER TURNED BOTTOM UP," is placed upon a chair, etc., etc.

From this sentence in the respondent's own translation of the excerpt in question it is perfectly apparent that this is not descriptive of the complainants' invention. A cylinder turned bottom up *after having been filled*, is very different from a cylinder turned bottom up *for the purpose* of being filled.

And it is this very sentence that exhibits the novelty of the complainants' invention.

In the complainants' invention the cylinder is turned bottom up *for the purpose* of being filled or charged. It is then immediately turned down again for the purpose of discharging the liquid extract during the process of percolation, and for the purpose of discharging the exhausted drug when percolation has been accomplished.

No specification, or even intimation of anything of this kind appears from the publication referred to.

This portion of the extract manifestly refers to a cylinder open at both ends. The top of the chair is so constructed as to tip or *turn* in order to bring the cylinder, when filled, under the tube which conducts the menstruum to the drug. Evidently the tube here spoken of, has a fixed position. It is connected with the reservoir containing the menstruum. This reservoir is of course fixed in a certain position, and being filled with liquid cannot be moved. The tube connects with it. It would not be convenient to fill the cylinder through its open end while directly under the reservoir, therefore the table top or a part of it, tips or turns so as to fill the cylinder without striking the tube. When filled, the cylinder in its table is turned so as to bring the end of the cylinder *under the tube*. The top is put on and the tube connected with the cylinder, and then percolation can begin.

The cylinder first spoken of in this translation is a cylinder open at both ends.

The two succeeding modifications describe a cylinder with a removable cover for one or both ends.

The expression from the translation, "the filled cylinder turned bottom up," has no force to show a filling like that set out in the patent.

No attempt even has been made in the respondent's expert evidence to show that the cylinder referred to in this translation is one *with a fixed or immovable end like* the complainants'.

Neither is it testified to by respondent's expert that in the description contained in this translation is there any *specification* of the operation described in the complainants' patent.

Morgan, p. 103, *Ints.* 38 *to* 40, *as follows:—*

X 38. Will you point out the passages in the extract referred to which exclude the idea of the cylinder's being charged from the top — an air-tight but removable cover, having also an air-tight tube connected with it, being then put on to such top end, and percolation proceeded with?

Ans. I find no passages which would exclude the idea of its being so charged. It appears to me that when the cover was removed, it could be charged with equal facility at either end.

X 39. Then will you testify that you find any specification in this extract, that the cylinder is to be charged at the lower end turned upwards, and afterwards turned back?

Ans. Only by implication; but the implication is very plain, that the cylinder may be so charged, and may be charged as readily in the way specified in the question — the lower end being turned upwards and afterwards turned back — as in the opposite way. It must be charged in one of these ways. The description of the mechanism shows this conclusively, and the user, therefore, is left to his choice of either of these two obvious ways.

X 40. I call your attention to the fact that I have asked if you found in the extract referred to any specification that the cylinder is to be charged at the lower end, turned upward and afterward turned back; and not your implications. Will you please point out the specification of these facts in the language of the exhibit?

Ans. The implications above mentioned are not mine, but are such as necessarily arise from the description of the mechanism, and of its mode of use, so far as stated. I DO NOT FIND IN THE EXHIBIT ANYTHING WHICH STATES EXPLICITLY THAT THE CYLINDER IS TO BE CHARGED AT THE LOWER END TURNED UPWARD AND AFTERWARD TURNED BACK.

Here we have a most complete admission that the printed publication is *no specification at all* of the process described in the complainant's patent of manipulating his device.

Respondent's own expert finds no direction in the printed publication for the manner of using the device therein referred to, such as the Rossenwasser patent describes.

But the construction of the chair or "stool" and the way the cylinder is held in it, utterly negatives the idea of the cylinder being reversed at all.

The cylinder rests in a hole in the top of the chair. It is enabled so to rest by the flange around the cylinders at middle of its length.

If the top of the chair, or any part of it turned over so as to turn the cylinder *bottom up*, the cylinder would *fall out* of its hole, because the flange would then be on the *under side* of the turned top of the chair.

The enlarged drawing used in argument by me, clearly illustrates this reasoning.

The respondent's expert, after having very confidently testified [p. 116, ints. 67 to 70], that the top of this chair revolves so as to invert the cylinder or percolator, when brought face to face with some of the mechanical difficulties in the way of such an operation, gives it up in this manner :—

X 71. Do you mean that the entire top of this chair or table thus revolves?

Ans. No; only such part of the top, between the side pieces of the frame, and such contiguous cleats or bars as a mechanic might provide for convenience in securing the cylinder, and its supporting seat, in a fixed position during the percolating process.

X 72. Do you think that the middle parts of the chair-seat revolve, leaving a strip or narrow piece on each side running along on the inside of the top of the side pieces of the frame?

Ans. From what is shown somewhat incompletely in the drawing, I infer that such an arrangement was contemplated; but I do not know that it is at all needful to determine this; since any provision such as a competent mechanic would readily supply, for allowing the cylinder and its supporting seat to revolve through a half circle, and to be secured in a proper position during the percolating process, would answer the purpose.

X 73. By these center pieces, do you mean the two bi-furcated boards or pieces, which when placed together surround the cylinder?

Ans. If, by such bi-furcated board or piece, you mean such a one as is represented in the side drawing *g*, showing one of the details of fig. 11, I do not. It is quite impossible for me to define from fig. 11, exactly what parts of the cylinder seat were meant to revolve; for the drawing, in respect to this minor and unimportant detail, is obviously incomplete. Nevertheless, it is no such deficiency as

would render it troublesome for an intelligent mechanic to construct a proper revolving seat, with its proper supports and attachments.

X 74. Is it not a fact that the two bi-furcated pieces, so far as they are illustrated, have beads fitting into grooves in the contiguous edges of the other parts of the table top, so that they could not independently revolve without destroying said beads?

Ans. I perceive only one bi-furcated piece represented in the drawing, upon one side of which there is shown a tongue (which I presume you refer to when you use the term "bead") that would fit into a corresponding groove. This bi-furcated piece is apparently intended for use on that side of the chair seat to which it is nearest, and I presume is meant to be drawn out when the cylinder is revolved; but the drawing of the top of the chain, and especially of those provisions which are intended to allow of the cylinder and its supports being revolved, is so incomplete that I must decline any attempt to give a precise explanation of that respecting which I should be so far left to conjecture.

Mr. Morgan's courage manifestly deserted him when his attention was called to the fact that the top of the table on which the percolator is placed would utterly forbid the percolator being reversed.

See also his answer to Int. 75, p. 117.

If an expert can change "tops" to "bottoms" and "bottoms" to "tops," then a description can be rendered elastic enough to cover anything.

BUT IS A PRINTED PUBLICATION WHICH IT IS NECESSARY TO PERVERT TO THIS EXTENT, SUCH A FULL, CLEAR AND EXACT DESCRIPTION AS WILL INVALIDATE AND OVERTHROW A PATENT.

But the complainants put in another translation which throws a very different light upon the passages.

This is made by Mr. Rossenwasser, the complainant, who appears and is cross-examined upon it, without in the least degree affecting the correctness of his evidence.

This translation is found on pp. ~~320~~ 212 to ~~325~~ 215 of the Record.

This makes the passage translated by Hieppe as "*the filled* cylinder *turned bottom up*," to read, "*the cylinder filled as above indicated.*"

The method of filling is carefully explained on p. ~~320~~ 212. Record.

The difference is between "the filled cylinder turned *bottom up*," and "the cylinder filled as *above*."

It is easy to see how an illiterate person, like Hieppe or Neitsch, not well acquainted with the language into which he is translating, would or might fall into this error, viz.: rendering "filled as above," into "filled and turned bottom up." And we must bear in mind that all of Mr. Morgan's unstable fabric of "implications" is built on the Hieppe translation.

Rossenwasser's qualifications can be judged of by his evidence, pp. 25 to 44, also pp. ~~308~~ 234 to ~~247~~ 160, also by his reading off-hand the German work [pp. ~~232~~ to ~~236~~ 150 - 153 inclusive], in answer to a question.

Now the burden of proof as to what this extract means is upon the respondents. If we can throw a doubt upon its meaning, that is sufficient for our purposes. We are not bound to show what it really means. That the respondent mustdo. But if we show his translation is doubtful, it is enough to cause it to fail as a published anticipation of our patent.

This translation, like a publication in a printed English book, must be free from doubt, and the burden of proof to make it so, is on the respondent.

Cohn v. Corset Co. 6 *Off. Gaz.* 259.
Bignall v. Harvey, 5 *Ban & Ard*, 638.
Colgate v. Tel. Co., 4 *Ban. & Ard.* 415.

The prior publication must show the same organized machine as that in complainants' patent, *operating in the same way.*

Clark Co. v. Copeland, 2 *Fish* 221.

Where there are two translations, that which is most literal will be taken.

White v. Allen, 2 *Cliff.* 244.

The Rossenwasser translation is more consistent with the other facts of the publication.

Same Case.

This can be seen by reference to the second paragraph of page 322, and the third of page 328. or pp 213, 217 of the record

In relation to this translation, the burden of proof is on the respondent to show beyond a reasonable doubt that it is a correct rendering of an excerpt from a German work, and that it describes with the accuracy of a patent specification *all* of the Rossenwasser invention.

The question is, what would be made, or could be made, following these descriptions, *at the time they were published,* not in the light of later inventions, or aided by the complainants' invention and description. The mind must take the German publication alone, by itself, and see if it describes Rossenwasser's invention and its operation. Of such an invention and operation it is far from full, clear and exact.

But see Rec. p 217. of the Defts translation - a passage on which all agree - Here it is shown most clearly that the device cannot be reversed -

Line 29 Rec. p 217.

1 THERE IS NO SPECIFICATION OF THE METHOD OF HANDLING THE DEVICE SET OUT IN THE ROSSENWASSER PATENT, TO BE FOUND IN THIS PUBLICATION.

2 THERE IS NO SPECIFICATION OF THE FACT THAT AN ENLARGED MOUTH C BECOMES THE ULTIMATE DISCHARGE.

Both of these features are essential to the Rossenwasser invention, and are copied into the description in the respondent's patent and used in his device.

In construing a foreign publication, even when in the English tongue, nothing can be left to *inference*, so as to make the publication describe the complainants' patent. It must be all *described*.

But when an imperfectly authenticated translation is offered in evidence, and its correctness called in question, it must be shown to exhibit in the clearest manner, all the elements of the complainants' invention.

There is no intimation in any or all of the translations offered, that the lower end or open end during percolation is used for the filling and discharging orifice.

No evidence upon this point has been ventured into by the respondent. Their expert has overlooked or avoided the point entirely. This conspicuous point in the description and claim of Rossenwasser has not received the notice of one word from them.

On the contrary, in cross-examination, Morgan in effect admits that no specification of this kind is to be found in the publication.

X 38. Will you point out the passages in the extract referred to which excluded the idea of the cylinder's being charged from the top — an air-tight, but removable cover, having also an air-tight tube connected with it, being then put on to such top end, and percolation proceeded with?

Ans. I find no passages which would exclude the idea of its being so charged. It appears to me that when the cover was removed, it could be charged with equal facility at either end.

X 39. Then will you testify that you find any specification in this extract that the cylinder is to be charged at the lower end turned upward, and afterward turned back?

Ans. Only by implication; but the implication is very plain, that the cylinder may be so charged, and may be charged as readily in the way specified in the question — the lower end being turned upward and afterward turned back — as in the opposite way. It must be charged in one of these ways. The description of the mechanism shows this conclusively, and the user, therefore, is left to his choice of either of these two obvious ways.

X 40. I call your attention to the fact that I have asked if you found in the extract referred to any specification that the cylinder is to be charged at the lower end, turned upward and afterward turned back; and not your implications. Will you please point out the specification of these facts in the language of the exhibit?

Ans. The implications above mentioned are not mine, but are such as necessarily arise from the description of the mechanism, and of its mode of use, so far as stated. I do not find in the exhibit anything which states explicitly that the cylinder is to be charged at the lower end, then turned upward and afterward back.

Morgan, Respondent's Expert, ~~*page* 160.~~ pp. 103, 104 of the Record.

~~See also Supplemental Brief, Pp. Lines 11 to 26.~~

Certain drawings were offered in evidence by the respondents as answering to the description contained in the book above referred to.

The volume from which the translation was made is of date 1830. The volume in which the drawings appear is of date 1843, — thirteen years later.

But there is no reference, in the passages from Geiger's handbook to which we have been referring, to these drawings.

Int. 4. Look on the third page of the alleged translation of the passage referred to, between the tenth and eleventh lines, and observe an interlineation in pencil, and state if in the original now shown you there is any reference of the nature interlined in the translation, or any reference in the book itself to any such figure or drawing?

Ans. No, sir; no such passage or reference appears.

Int, 5. On what pasage of the book, and at the end of what line, would the reference to Fig. 10 be, if it were referred to in this book?

Ans. On p. 158, and at the end of the 27th line, at the point already indicated by two horizontal lead-pencil lines.

Int. 6. Now, look on the 2d line, p. 5, of the alleged translation; and look also at the German book now in your hands, and state if there is any authority in the original German for the words: "Also Fig. 11 of copper-plate"?

Ans. No such words are in the original book, either within the parenthesis referring to the magazine, or following after; as it is plain to one even uneducated in the language, that a new sentence begins immediately after the parenthesis.

Int 7. On what page, and at what line, would this reference to Fig. 11 of copper-plate be, if it were in the German text?

Ans. It would have to follow the 12th line, and be between it and the 13th line, p. 159.

Int. 8. You will observe that both of these pencil interlineations contain the words, "In Liebig's Edition." State if there is any authority in the text of this extract for any such allusion to any such edition?

Ans. There is none whatever.

Rec. pp. ~~208, 209.~~ 134, 135

But even if the drawings were properly connected with the description they distinctly negative the idea of a percolator like Rossenwasser's.

Rec. p. 138, *Ints.* 21 *to* 28.

Also p. 142, *Ints.* 32 *to* 38; *p.* 143, *Ints.* 34 *to* 40.

But to confirm the views taken by us of the Realsche presse, the following is the evidence of a druggist who has used it.
Record Pp. 122, 123, 124.

No other evidence of the same kind appears on the record on the subject.

X 39. Have you ever seen the percolating device known as the Realsche Presse?
Ans. Yes; I have seen it.

X 40. Will you describe it?
Ans. There is a cylinder on which a column of water is pressing, and at the bottom of the cylinder a hole through which the water can pass off.

X 41. Is this cylinder charged with the substance to be percolated, and if so, how? Please describe minutely the method of using this device.
Ans. The drug is put into the cylinder and then the column of water is pressing on the drug, extracting it at the same time.

X 42. What, if anything, prevents the drug from running through the lower orifice?
Ans. Generally a little sieve put there—same as in other percolators.

X 43. Is this sieve a perforated metal plate?
Ans. Yes, generally it is.

X 44. Is there another one at the top, to prevent the swelling drug from expanding into the orifice through which the liquid is admitted into the cylinder?
Ans. That arrangement I never have seen.

X 45. How was the sieve at the bottom kept in place?
Ans. The sieve just rests on the bottom of the percolator or cylinder.

X 46. At which end of this cylinder was the drug introduced?
Ans. At the upper end—at the bottom it runs out into a point.

X 47. How was the liquid prevented from flowing over the top of this cylinder?
Ans. There was a cover to the cylinder, and in the cover a hole where the column of water was passing in.

X 48. Was the exterior or outside arrangement of the cylinder in form like the Rossenwasser percolator which Mr. Spieth shew you?
Ans. Those which I have seen were not exactly like it, because they were more pointed and also somewhat different in shape.

X 49. Was or not the only difference, that the ends of the cylinder of the Realsche Presse were a little more conical or funnel shaped?

Ans. Yes.

X 50. Will you describe the apparatus by which the liquid was introduced into the cylinder, and the different material of which it was constructed?

Ans. It was a long tube of tin ending in a funnel, into which the water was poured.

X 51. Did you ever see any flexible tube used?

Ans. No.

X 55. Please state how you use and operate the Rossenwasser percolator.

[*Objection continued.*]

Ans. I haven't used it yet — I only got it yesterday.

X 56. Please describe the Rossenwasser percolator as known to you, and do you hold in your hand the device known as the Rossenwasser percolator?

[*Objection continued.*]

Ans. Yes; I hold what is known to me as the Rossenwasser percolator. It is a tin cylinder with a cover, two holes, one at the top and one at the bottom, and a tank of tin with a hole at the top and bottom, and a handle to hang it on. They are to be connected by a flexible tube. Inside there are a cross bar, a perforated plate, two perforated tin plates, a rod, two wooden spring clasps to interrupt the flow of the liquid. I apply them on the flexible tube. The cross bar is to go into two bosses; a rod passing through it, fastened by a set-screw.

X 56½. Please state where you insert the drug to be extracted?

Ans. The drug is to be inserted at the end where the cover is, and then it is tipped over.

X 57. What is the necessity of tipping it over?

Ans. There is a vacant space formed under the perforated plate inserted, through which the extracted liquid is to pass, and there was no such vacant place in the Realsche presse.

X 58. There was a vacant space between the perforated plate formed by the conical end of the cylinder in the Realsche presse, was there not?

Ans. No; there was not — that's just the difference. By this arrangement of having a vacant place between, the drug is pressed together so that it cannot expand. That is a very important arrangement — this having it pressed together.

But the drawing, Fig. 11, in the edition of 1843, has no connection with either of these descriptions. The drawing has letters of reference which are not to be found in the descriptions.

Second Branch.

The second branch of the defence to the bill is that a device like the one covered by complainants' Patent, was used by one Adolph Neitsch, in New York City, ~~in 1878~~. more than ten years prior to Nov 16, 1883.

This gives rise to a question of the comparative weight of two pieces of oral evidence.

The law upon such questions is well settled by a universal current of decision.

Alleged prior use must be proved beyond a *reasonable doubt.*

Howes v. Antisdel, 8 *Off. Gaz.* 685.
Wood v. Cleveland Co., 4 *Fish pp.* 550—560.
Perham v. Button Hole Co, 4 *Fish*, 468—482.
Sayles v. R. R. Co., 4 *Fish*, 584—590.
Crouch v. Spear. 6 *Off. Gaz.* 187.
Roemer v. Sim 5 *Off. Gaz.* 555.
Coffin v. Ogden 18 Wall 120;
Jones 17 Blatchf. 42

CAMPBELL

In the light of this rule it is now proposed to examine the evidence attempting to support the allegation of prior use.

Nietsch gives an account of the percolator he says he used in New York on pp. 58-59 of the record, ints., 17 to 32.

By this it appears that he asserts he used a percolator such as described, a few times in his store on the corner of Varrick and Broome streets, N. Y.

Nietsch had had something to do with this case before he was called to testify.

86. Have you read the specifications of the patent to Mr. Rossenwasser?
Ans. I believe Mr. Berry shew me the specifications.

87. You understand the structure of the percolator described therein, do you not?
Ans. Yes—from that and the drawing in the newspaper which I saw.

88. State when Mr. Berry exhibited to you the description in the patent, and when you saw the drawing in the newspaper.
Ans. I saw the drawing, I think, about a year and a half or two years ago, when it came out in the newspaper—the advertisement of it. The other I saw when Mr. Berry was here, November 11th, the day before the deposition was taken, when he called to notify me to come here.
Record p. 64-65.

95. State when your attention was first called to this percolator as compared with the one described in the Rossenwasser patent and advertisements, when and by whom?
Ans. I saw the advertisement in the Dutch Americanische Apoteke Zeitung, and I, remembering my old percolator, wrote him, the editor, that this was only the old thing freshed up; about a year and a half ago; can't tell exactly.
Record p. 65.

Nietsch sold out to Herman Paepke, and with the other stock went this alleged percolator, as Nietsch says.

Nietsch testifies that that percolator was left in the shop when he sold to Paepke.

It was in a little outside building used for a laboratory,
Record p. 60, *int.* 30.

This alleged prior use rests on the evidence of this one witness alone. He is unable to call any one to corroborate him.

He is contradicted by Herman Paepke, the man to whom he sold out, and by Herman Sellheim, who worked for Nietsch near the time when he sold to Paepke.

Herman Paepke says when he bought Nietsch out, he has no recollection of any such a device in either the shop or the little back room.

He made tinctures and extracts; he made an examination of the stock two or three times before purchasing, but he has no recollection of any percolator there. He remembers what there was there. Both the shop and the back room were very small rooms.

It was a small German apothecary store, and without doubt the whole stock was carefully scrutinized before the purchase was made.

Paepke is a very careful and conscientious witness. He does not swear up and down that there was no tin percolator there. He says he examined the stock carefully; he saw none; he should have remembered it if it had been there, and then he says as follows: —

Int. 72. Have you any doubt in your mind that there was not any glass percolator there at that time?

Ans. I doubt that there was one there. I think there was not one there.

Int. 73. Have you in you own mind any doubt on the subject as to the glass percolator?

Ans. No, I have not; in my mind I am sure.

Int. 74. Are you not also, in your own mind, equally sure that there was no tin percolator?

Ans. Yes; I am in my mind equally sure.

X. 76. Do you give impressions only, or actual, clear remembrance?

Ans. I give actual, clear remembrance.

Rec. p. 126.

It is almost impossible to understand how that device, so peculiar in construction, so new to the new occupant of the shop, could have been in this little shop, and still not have been noticed by him, after renewed and repeated examinations of the stock.

Herman Sellheim.

Sellheim is also a careful and cautious witness.

He is now the owner of two apothecary stores in New York, one one Rivington street and one on the corner of Clinton and Broome streets.

He worked for Nietsch in the store he sold to Paepke in 1859 60.

His testomony is to the same effect, Record, pp. 126-128.

I submit this shows a careful man in the way he swears, but one perfectly confident in his own mind that no such percolator as Nietsch describes was in the shop on Varrick and Broome streets.

Now we are not obliged, in order to meet Nietsch's evidenee, to show it was false.

We are only called upon to throw a reasonable doubt upon its correctness.

The respondent must establish the proposition of prior use beyond any reasonable doubt.

Rogers v. Beecher 3 Fed-R. 639

We submit that the depositions of Paepke and Sellheim are stronger from the guarded way in which they are expressed than they would have been if characterized by unqualified assertions.

They were familiar with the contents of both rooms. They saw them every day, the one for years, the other for six months.

It is impossible to state that this is a prior use, established under the rules of evidence governing such cases.

Besides, Courts are very slow to hold a patent to be anticipated by a prior use testified to only by one person.

The Third Branch.

This is to the effect that a percolater substantially like that covered by the patent was used by the respondent in 1878, at Biddeford, Maine.

ALLEGED PRIOR USE BY THE RESPONDENT CHARGED WITH INFRINGEMENT, IS ALWAYS CAREFULLY SCRUTINIZED.

In the first place this defence is not well pleaded.

The allegation is that a percolator like the complainants' was used "by the defendant at Biddeford, Maine, as early as A.D. 1878."

I submit that this is not a sufficiently definite notice to meet the requirements of the statute relative to special matter to be given in defence.

This allegation appears only in an amended answer filed September Term, 1883.

It does not appear at all in the original answer filed June, 1883.

The defendant was late in recalling his own use of a percolator like that covered by complainants' patent.

Soon after the bill was filed, a motion for an interlocutory injunction was filed and argued before Webb, J.

In this hearing the respondent made a lengthy affidavit, but he even then forgot to swear that he had used a percolator like the one he subsequently swore to.

This evidence appears on p. 208, and is worthy of attention. The affidavit was sworn to March, 1883.

In it he says: —

> In the course of my business, more than four years since, at Biddeford, I used a percolating vessel constructed in the form of an ordinary funnel, the body elongated in a cylindrical form. Placing the drug in this vessel, the form and interior arrangement of which is shown in Exhibit C, annexed and made a part of this affidavit. I secured the drug D in position by placing upon the exposed surface of the drug a flat perforated plate C, pressing the same downward, and holding it in place by means of a brace B, backed by a cross-bar A, fitted into the vessel, as shown in the drawing.

With a motion for an injunction hanging over him, why he should have omitted to think of the use by him of another percolator exactly like the complainants', is a marvellous fact in the history of evidence. I think the parallel to such a piece of forgetfulness can hardly be found in any other patent cause.

When interrogated upon this on the testimony for final hearing, his evidence is not, to say the least, very clear in its reasons.

X. 102. Why did you not give an account of this vessel in your affidavit filed under the preliminary motion, in this case?

Ans. I don't know but it is referred to.

Rec. p. 47.

After an adjournment he comes in with the following reason:

X. 135. Will you now explain your motive, while having in your possession, at the time of the preliminary hearing, the Exhibit 10, which you say is substantially the same as Rosenwasser's invention, for holding that back at that hearing, and presenting in your evidence then and swearing that you used it during the same years that you now say you used Exhibit 10, a device so different as Exhibit J?

Ans. Exhibit 10 was retained for later proceedings in the case; and Exhibit J was used for more than seven years previons to that hearing.

Rec. p. 51

Feeling the difficulties under which this tardily conceived defence labored, it was then attempted to strengthen it by corroborative testimony.

To this we will now look.

In cross-examination, p. 79, Berry was asked who were with him as clerks while was using this percolator which he sets up in his amended answer.

[It may be here stated that this is an exhibit in the case known as Ex. 10.]

To the question referred to, this is the answer: —

X. 138 Have you found the names of any of your clerks that were cognizant of the use by you of Exhibit 10?

Ans. The names of clerks that were with me when I was using Exhibit 10?

X. 139. Name them all.

Ans. Charles A. Siegmond, William E. Emery, William Hill and George Stover.

X. 140. Where are they now?

Ans. Siegmond is in Boston. . . . Emery I don't know about. Hill is dead and Stover I do not know about.

Rec. p. 51.

On the day previous he was asked in cross-examination: —

X. 77. Did you have any clerk at that time?

Ans. I did.

X. 78. What was his name?

Ans. I cannot say certain — I will tell you to-morrow.

Rec. p. 47.

Now this evidence [first quotation] was given in Nov., 1883. At the time this evidence was taken, Edwin U. Blackstone [witness called by the complainant] was in Berry's employ, and had been since June, 1881. But he was not named.

As to his knowledge of Emery's whereabouts, Emery says: —

Int. 173. Did Mr. Berry know where you were, and where you had been studying medicine last?

Ans. I think he did, through Dr. Emery.

Rec. p. 174.

The first witness introduced to support Berry is Hampton E. Hill.

In the direct, he says he saw Exhibit 10 hanging up by the cellar stairs in Berry's shop, in 1878.

But in cross-examination he shrinks his statement to this: —

X. 27. Did you ever take apart the percolator, which you say you saw in the store of the respondent, at Biddeford?

Ans. I did not.

X. 28. At any one of the times that you can now remember of having seen this or a similar device in the store of the respondent, at Biddeford, did you ever take it apart and examine its internal structure and arrangements?

Ans. I did not.

X. 29. Then, at the times on which you can now remember of having seen this device, or a similar one, you were ignorant, were you not, of its internal structure and arrangement?

Ans.. I was.

X. 30. Can you state positively that the two cylindrical vessels now before you in the form of Exhibit 10, were the identical vessels by your own knowledge, which you from time to time saw, or at all of the times together saw, in the store of the respondent?

Ans. I am not sure that they are the same vessels, but they have the same appearance.

X. 31. Then, Doctor, is not your actual knowledge strictly limited to the external appearance of two cylindrical vessels?

Ans. To the two cylindrical vessels and the rubber pipe.

X. 32. Are you positive, so that you can testify without hesitation, that the two cylindrical vessels that you saw, were of the same diameter and length as the ones before you.

Ans. I am not positive; but they appear to be the same ones.

Rec. p. 67.

See also Ints. 37 to 39 of this deposition; also 40 to 60, pp. 68 to 71.

Nothing further than this seems to be necessary to show that

this evidence amounts to nothing, and perhaps has rather a bad tinge.

The next witness is George E. Ricker.

As usual, in the direct examination, he starts off well and testfies directly to Ex. 10.

But on cross, he also takes on somewhat smaller proportions.

X. 19. Can you testify from your own recollection, and not from information otherwise derived, that the lower vessel had this perforated diaphragm, placed as you now see it?

Ans. I cannot.

X. 20. Can you testify of your own knowledge of 1878 — and not from information otherwise derived—that the lower vessel had in it, at the time it was being used, a diaphragm like this one with a small handle on it?

Ans. I cannot.

X. 21. Did you ever see the lower vessel, when you can state, from your own knowledge, in the spring of 1878 — and not from intimation otherwise derived—that it had within it either or both of the two diaphragms referred to?

Ans. I can; but I can't state the particular day.

X. 22. Can you testify, of your own knowledge, that you saw that vessel with those two diaphragms in it, in 1878?

Ans. I did—or one just like it.

X. 23. Do you know, of your own knowledge, what was in the vessel at the time when you say you saw it in use?

Ans. I do not—a drug.

X. 24. Did you ever see Berry filling the vessel with any substance?
Ans. I have.
X. 25. Do you know what it was?
Ans. I do not.

X. 26. Can you testify that the vessel that you saw had this nipple?
Ans. I cannot.

X. 27. Can you testify that the other one had this screw cap?
Ans. I cannot—but I think not.

X. 28. Can you testify that both of them, or either of them, had the stop-cock which you see on them now?
Ans. They both had them on them.

X 29. Was the lower end of the lower vessel set down into or through a hole in the bench or table?
Ans. Funnel-shaped end did.

X 30. Did you see any perforated diaphragms—separated from the lower vessel—lying about anywhere near it?
Ans. I can't remember.
Record p. 74.

The next witness was Charles A. Siegmund.

This witness begins with more caution than some of the others.

X 3. State whether or not you have seen the device now shown you—respondent's Exhibit 10—in Biddeford. If yes, where and when did you first see it?
Ans. I could not swear that it was the very identical thing, but one similar in every way, shape or manner—that is, so far as the exterior is concerned. I saw it in Biddeford, in the year 1878, at John Berry's drug store.
Record p. 75.

Subsequently, however, he states that the percolating vessel had projections from its interior periphery near its lower end, and that on these sticks projected upwardly into the vessel to hold the diaphragm.

X 9. Do you mean that the sticks rested upon points or studs projecting from the lower end and inside of the percolating vessel?
Ans. Yes, sir.

X 10. State if you can point out the place where such projections existed, or if you see any marks indicating where those studs were.

Ans. I can't point out the particular place. The sticks were in there, some four or five, I think; I can't recollect just where they were.

Record p. 75.

Now, after this, this witness repeatedly states that he saw Berry insert into the lower end of the percolating vessel, a disc of the same diameter as the interior of the vessel and *flatwise.* That is, the disc, the same diameter as the interior of the vessel was pushed into the vessel flatwise and made to pass the projections, an inch in length, without tipping or slanting.

Page 76, *Ints.* 24 to 29.
Page 77, *Int.* 37.
Page 78, *Ints.* 45 to 46.
Page 78, *Ints.* 53 to 57.

But he took it all back quick enough when he got the proper intimation.

Page 79 *Int.* 60.

The question is, what amount of confidence is to be placed in a witness that will talk like this?

Edmund E. Swett testifies squarely that he saw Exhibit 10, or something like it, in 1878.

He fixes the date because he came to Biddeford, Maine, to bury his mother in 1878.

He is a relation of Berry's.

He was in Pennsylvania in 1878 and came on to Maine.

He has resided in Biddeford since 1880, and has seen this thing every time he has been into his shop since that time.

He had a talk with Berry before testifying.

Page 81, *Ints.* 26 to 27 1-2.

~~See Exhibit A in Supplemental Brief pp 5, Ints 1, 2.~~

Then C. T. Emery was called but his evidence amounts to nothing in the way of confirmation.

Page 196, *Int.* 9.

Page 197, *Ints.* 14 *to* 37.

To meet this, the complainant put onto the stand two witnesses :—

William E. Emery,

Edwin U. Blackstone.

Emery was clerk with Berry two years prior to 1881.

Blackstone was clerk with Berry from 1881 to 1884.

William E. Emery is given by Berry as one of the persons that knew of his using Exhibit 10 in 1878.

Page 52, *Int.* 139.

Here are two clerks, long in Berry's store, and the best qualified of all persons to say if Exhibit 10, or anything like it was in that store from 1879 to 1884.

They both say there was nothing of the kind.

Emery, Ints. 6 *to* 21, *pp.* 161 *to* 162.

Blackstone, Ints. 10 *to* 37. *Int.* 44, *pp.* 175-176.

These are both attacked, but only by the evidence of Berry himself. Both of the young men deny the charges the respondent now brings up against them to affect their evidence in the case.

Page 187, *Int.* 162.

Page 174, *Int.* 175.

Emery went away from Berry's with a recommendation from him of a good character.

Page 174, *Int.* 174.

From what we have seen of Berry's evidence in this case, his attack upon these two clerks of his is not surprising.

It will not affect their evidence upon this question of fact.

To meet them, Berry has really no evidence besides his own that can stand analysis, except Sweet's.

These two witnesses disclose another important fact.

There was an old tin percolator in the side room of Berry's shop, one of ordinary construction, and it had been there, *hanging up*, for some time.

Gottfried v Brewing Co. 5 Ban. & Ard 4.

This was undoubtedly what those witnesses of Berry saw.

But these two witnesses for complainant were not occasional visitors.

They were employed in the shop, and had daily occasion to use all the apparatus.

No kind of witness could know better what was there.

~~See also Supplemental Brief p5, lines 3 to end of page~~

As I have shown, the burden of proof is upon respondent to establish prior use beyond a reasonable doubt.

With the evidence of these two witnesses against him, he has failed to come up to the legal requirements of proof on his side in such a case.

I submit the defendant has failed to sustain the allegations of his answer.

I submit that the decree of the Circuit Court should be reversed.

WILLIAM HENRY CLIFFORD.

In the Supreme Court of the United States.

October Term, 1888.

No. 122.

IN EQUITY.

NATHAN ROSENWASSER, ET AL., APPELLANTS,

v.

JOHN BERRY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

BRIEF FOR APPELLEE.

WILBUR F. LUNT,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

NATHAN ROSENWASSER, ET AL.

v.

JOHN BERRY.

The complainants base their claim to a decree upon their Letters Patent No. 256,504, printed on pages 14 and 15 of the Record.

The defendent alleges

I.

1. That the said letters patent issued to Rosenwasser are invalid, *because the specification is ambiguous and does not describe and claim an operative combination.*

Rev. Stat., § 4,888. "Before any inventor or discoverer shall receive a patent for his invention or discovery, he shall make application therefor, in writing, to the Commissioner of Patents, and shall file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound and use the same; and in case of a machine, he shall explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions; and he shall *particularly point out and distinctly claim* the part, improvement or *combination* which he claims as his invention or discovery."

The alleged invention is for a *combination of parts* for a specified purpose.

The text of the specification indicates that a porous diaphragm or filter paper, cloth or some device for retaining within the percolator the substance from which the extract is to be obtained, is absolutely necessary for the successful operation of the combination for percolating purposes.

The claim is "the combination with a vessel G and adjustable tube F, of a percolator A, having a large filling and discharging orifice at its lower end, and a restricted opening B, at its upper end with which connects the lower end of the adjustable tube or pipe F, substantially as set forth."

There is no description of a percolator in said specification. Its interior arrangement is not described. Percolators as described in the U. S. Dispensatories, 9th Ed., 784, 13th Ed., 932, 14th Ed., 932, show a funnel-shaped vessel inside and out. It is manifest that if the percolating vessel being funnel shaped is inverted for use, its contents, if any, must either from gravity or pressure fall out. If operated while inverted, some device for retaining the contents, is an essential part of the combination as much as the tube or reservoir.

See testimony of Morgan, pp. 87, 107.

See claims, pp. 225, 226, Proceedings in Patent Office.

See claims, p. 228, on Rosenwasser's application.

In the descriptive part of his letters patent, it is said that cloth, filter paper, etc., may be used to retain the contents of the percolating vessel, thus excluding a diaphragm plate as an essential part of the device, and the claim makes no reference to it.

A claim for a combination which omits an essential operative part cannot be a valid claim for a useful and practical invention.

The machine or combination must be a practical means of doing what is desired.

If the diaphragm was supplied to the claim by legal construction, the device would not be operative.

See testimony of Rosenwasser X 71, 76, 77, 78,— pp. 27, 28.

2. The letters patent issued to Rosenwasser are void for want of invention in the combination therein described and *claimed*.

The patentee, Rosenwasser, on pp. 26 and 27 testifies: —

X 65. The percolating vessel described in your letters patent — complainants' Exhibit A — describes a cylindrical vessel, open at one end and closed at the opposite end, save a constricted opening and tube connected therewith, does it not?

Ans. That is part of my percolating vessel as described in my patent.

X 65½. Does or not that describe completely the percolating vessel, excepting its interior arrangement, as in Fig. 1, Ex. A?

Ans. It does.

X 66. Please state whether or not the container or percolating vessel, shown in Fig. 1, Ex. A, is an ordinary percolator, such as has been in common use for many years, save and excepting therefrom the diaphragm?

Ans. It is, when inverted; but it is not then my containing vessel; and as it is when used for the purpose of the invention, it is not a common percolator?

X 68. Is the wide opening for solids different from the opening for solids in any common percolator?

Ans. It is of the same nature.

X 69. Is it of the same form?

Ans. It is.

EXTRACT FROM COMPLAINANTS' PATENT.

Page 15. "Now, by the ordinary process and mechanism for making fluid extracts, it has heretofore been the practice to charge the menstruum into the large mouth C; but this method made it impracticable to obtain any increased or variable pressure upon the menstruum *unless a cap-piece were fitted over an enlarged mouth* C *and a tube or its equivalent attached and connected either to an elevated reservoir containing the menstruum* or else some special pressure apparatus connected with said tube. All this in practice is impracticable; but by the employment of my device and method it is a very easy matter to charge the container A *and by applying the* menstruum in *exactly an opposite manner* from that heretofore adopted, viz: to the end of the container A, opposite the charging-mouth C, to exert any desired pressure upon the menstruum."

In other words instead of using a suitable cap for the percolating vessel such as he describes, he inverts an ordinary percolating vessel, and is then obliged to supply the equivalent of a cap to retain its contents when so inverted.

"Figure 2 of the drawings illustrates my method and mechanism which consists, after the container A is charged in the usual manner, through its enlarged mouth C, as already specified, *in inverting the percolater, attaching a flexible or other tube* F *to the constricted mouth* B

and applying the menstruum through said tube from an elevated reservoir G."

The container A is nowhere described as having a diaphragm as a constituent part of the structure.

See pp. 224 to 229 as to claims.

Changing a mill from a horizontal to a vertical position does not involve invention.

The use of an old article in a new situation is not of itself such a novelty as to be monopolized.

The mere reversal of two parts of a device in their position upon a structure is not to be regarded as a novelty.

A modification which follows the reversal of an apparatus, as a matter of course, should not be recognized as a novelty.

It is not invention to combine old devices into a new article without producing any new mode of operation. See Supreme Court cases cited in Sec. 37, Walker on Patents.

Invention, in the sense of the patent law, is the finding out, contriving, devising or creating by an operation of the intellect, something *new and useful, which did not exist before.*

It must be new, it must be useful. If it is a machine it must be *operative*, and accomplish the end practically and usefully in the way pointed out.

Parkhurst *vs.* Kinsman, 1 Blatch., 497.

Rosenwasser's device as patented, cannot be practically used. Berry's testimony Ans. to Int. 25. pp. 40, 41, shows that without a diaphragm or some equivalent device in the percolating vessel where the fluid enters, the drug would expand and clog the inlet. The menstruum, used by druggists are all of a volatile nature and the use of a percolating vessel with a wide, open mouth or discharge orifice is impractical and inconvenient, Ans. to Int. 31 & 32, p. 43-44. But the best proof that Rosenwasser's device is impractical is found in his own testimony. On cross ex. Int's. 59 & 64, p. 26, complainant says he has not manufactured and sold any percolators without closing the lower end of the container with a cap having a constricted outlet similar to the inlet at the top. The cuts Resp's Ex's 2, 3, 4 and 5, show some of the modifications which Rosenwasser found it necessary to make in his supposed invention in order to make a practical use of it.

The Court will take notice of devices and contrivances which have been long in use and the structure and form of which are matters of common knowledge.

The state of the art is shown in the U. S. Dispensatory, by Wood & Bache 13th ed. 1870 introduced; in Parrish's Practical Pharmacy, 1867, p. 135. Encyclopædia Britannica, Vol. 9, p. 167. Ures Dic. of Arts and Manuf., Vol. 2, pp. 370, 372. Geiger's Pharmacy, 157. Leibig's Ed. of same, 157. Loisel's Patent, Exhibit 6, Testimony of John Berry, p. 38. A. F. W. Neitsch, pp. 58-60. Hampton E. Hill pp. 66-67. Seigmond, p. 75, 76. Hermon Paepke, p. 122. See Record, pp. 222-224-227.

An examination of the papers, Resp. Ex. 17, will show the observation of the patent office examiner communicated to the complainants' attorneys concerning a percolator (See Record, pp. 225-26) "consisting of a container having a large filling and discharge opening at its lower end, and a restricted opening at its upper end through which pressure is transmitted to the substance or liquid within the percolator, substantially as set forth." This is the first claim as then presented. Concerning this claim the examiner says (bottom of p. 226,) "applicant's first claim is untenable. First, because without the diaphragm it is an entirely useless device. No possible way has been shown in which it can be used without said diaphragm. This claim is pure and simple to a funnel inverted."

That claim was presented with the same description as is now contained in complainants' Letters Patent.

The defendant asserts that the claim as now drawn, combining a tube and reservoir with a container or percolator, as above described, is also untenable for the same reason.

This is so apparent upon examination that no argument or reference is required.

A reference to the Dispensatories in the case, the testimony of Berry, p. 40, 41, Dr. Hill, p. 69, and other works above referred to, where they do not show specially, a cover fixed to the bottom of the percolating vessel when in operation, show one fixed to the top.

When fixed to the top it is a substantial part of the structure of the percolating vessel and it can make no difference, while in operation and combination with the tube and reservoir whether or not it can be detached afterward.

The percolating vessel in each case must be held mouth upward when charged and downward when the solid is discharged.

Rosenwasser says his percolating vessel must be held mouth downward while the process of percolation is in progress. There is no utility in such a device or method of using it and besides it is not practical for use in the business of a druggist.

Berry, p. 43. Rosenwasser, pp. 25, 26, 42.

The practical advantage over the ordinary funnel or percolator is nothing. There can be no invention in a *simple enlargement of the orifice for the discharge of the percolate.*

Vinton *vs.* Hamilton, 104, U. S., 491.

The exterior of the device which Rosenwasser claims as new and his invention, is the Boullay percolator when operated with a cover and column of water as described, simply cutting off the lower end of the percolating vessel.

The testimony in this case shows that it is impracticable to use Rosenwasser's device, for two diaphragms are necessary.

See Morgan, p. 102.

Rosenwasser, x 71–79. p. 27, 28.

Berry, p. 50 x 122–126, x 153. p. 53.

The device must be practicable to be patentable.

Sayles v. Chicago & N. W. R. R. Co., 1 Bissell, 468.

Rosenwasser has claimed in his testimony that his specification contained a description and claim for an adjustable diaphragm.

The observations of the examiner who rejected such a claim and the testimony of Mr. Morgan, p. 107 as well as inspection, would seem to settle the question against Rosenwasser's assumption.

If a diaphragm can be made a part of the claim by legal construction, why not the cloth, or paper, and which is to be supplied?

In this case Rosenwasser has assumed the rôle of a German and English scholar, and has also set himself up as a mechanical expert. He has endeavored by straight swearing to avoid the force and effect of the defendant's evidence.

In his deposition printed on p. 135 et seq., he undertakes to show his knowledge of the German and English languages and to discredit the translation from Geiger produced by the defendant.

It is true that different translators may be expected to express themselves differently, but in this case, by translations of the same passage on pp. 136, 137, 150, 151, 212, 131-134, 215-218, by Rosenwasser, Froebel and Heipe, Rosenwasser is shown to be unable to translate the same passage twice alike, and a comparison of Rosen-

wasser's, Froebel's and Heipe's translations show that there are no differences which convey to the mind contrary impressions, although the forms of expression differ.

Rosenwasser is shown to be nearly two hours in translating three pages of *his mother* tongue.

He spent many hours in undertaking to show defects in defendant's translation, but this defendant submits that Froebel's translation, pp. 131-134, introduced by complainant, supports the correctness of defendant's as does the testimony of Rossenwasser, pp. 149, 150-153, 153-158 inc.

II.

The combination and device which the complainant Rosenwasser has patented, was patented or described in some printed publication prior to his supposed invention or discovery,

The precise combination and identity of form being so clearly shown in the two editions of Geiger's Pharmacy before alluded to, we at once call the attention of the Court to those works, p. 157 et seq., and to the plate in Ex. 12.

The defendent furnishes the translation Ex. 14a, p. 215 et seq. Concerning this translation which Neitsch declares is correct, the complainant, Rosenwasser, has given much testimony in rebuttal. His testimony in this regard is called to the notice of the Court.

The similarity of these devices is made clear by the very intelligent remarks of Mr. Morgan, the expert, in relation to the correspondence between the mechanism specified therein and that set forth in complainant's patent. See p. 91 et seq. See also Berry's testimony, pp. 42, 43.

There is no better way to prove that the description in Geiger's work is sufficient to enable one skilled in the art to make and use the device, than to make a practical test by submitting the description to a workman with directions to make such a device as is described therein.

In the case of Plimpton v. Malcolmson, 3 Chan. Div., 531, such a test was made. The workman should not be one of the most skillful in his trade, but an ordinary, fairly accomplished workman, perhaps such as we designate by the word journeyman.

Ex. 16, which is a copy of defendant's translation 14a, and a rough pencil copy from the plate in Ex. 12, were given to George L.

Hill, who resides at Phillips, a country village in Maine. His deposition on p. 83 et seq., and the product of his work, Ex. 15, will convince the most skeptical that the description is sufficient to enable even an unlettered man to construct the apparatus described. Ex. 15, a percolator which Hill constructed, does credit to the skill of the workman. The devise is a practical one. The identity of complainant's device in all its essential parts with that described in Geiger's work is clearly shown by an examination of this apparatus and the testimony of Mr. Morgan p. 95 as well as by the testimony of Adolph F. W. Neitsch, p. 57 et seq., and Berry pp. 42, 43. Mr. Neitsch testifies that the books were on sale in this country many years ago, and also that the apparatus therein described as Beindorfs' Modification of the Realsche Presse, contained all the parts and principles of the complainant's alleged invention. Mr. Paepke, complainants' witness, testifies, p. 123x49, that the only difference in the exterior in Rosenwasser's device and the Realsche Presse is, that the ends of the Realsche Presse were a little more conical.

The English patent granted Edward Loisel, Nov. 10, 1854, Ex. 6, shows an apparatus combining all the essential elements of complainant's alleged invention. See Berry, p. 41, int. 26.

The attention of the Court is also called to the several publications already referred to, in the part of this brief relating to the state of the art, and to the testimony of witnesses as there cited.

III.

The complainant Rosenwasser was not the original and first inventor or discoverer of any material and substantial part of the thing patented by his letters patent.

In considering this allegation many of the citations already made are directly in point.

The defendant, Mr. Berry, is a man of education and ability, as his deposition shows. He has made a study of the science of pharmacy and understands thoroughly the theoretical and practical parts of his profession, and is well read in all the publications relating thereto. He does not now, and never has claimed as new, the combination of an elevated reservoir and a tube, flexible or otherwise, with a percolating vessel. Such a device for the purpose of obtaining pressure upon the substance to be percolated is, as has been hereinbefore shown, old and well known to all the world.

The description introduced from Geiger's Pharmacy with the testimony of Mr. Neitsch, p. 57 et seq., shows the discovery many years ago of such a device covering all the claims set up by the complainants. He describes on pp. 58, 59 et seq. the whole apparatus as used by him in New York City more than twenty years ago. He states the circumstances of the purchase by him in New York of the main part of the apparatus and where he used it in New York. He is a candid, intelligent and disinterested witness, who knew what he was testifying about and his statements are clear, certain and positive. He says, p. 65, that the difference between the apparatus which he used and Rosenwasser's is, that Rosenwasser's didn't have the funnel-shaped end in the bottom, and did have a flexible tube — but no material differences.

"*Int.* 24, *p.* 60. State whether or not tubes were made and used of any flexible material?

Ans. I haven't used any of flexible material, but Geiger says they may be used." This witness says, p. 65, that he first had his attention called to a comparison of Rosenwasser's apparatus with the Beindorf Realsche Presse about a year and a half before he testified, by an advertisement in the "German American Apothecary Times" and that he then wrote to the editor of that paper, that it was only "the old thing freshened up." The force of this witness's testimony the complainant has attempted to break by the testimony of Paepke, p. 119, and Sellheim, p. 126, but these witnesses whose testimony proves that they scarcely understood that they were making their answers under the obligation of an oath, show, simply, that they cannot remember anything about the use of the percolator by Mr. Neitsch twenty-five years ago.

The strong affirmative evidence of Neitsch is not shaken by the want of recollection of these witnesses to both of whom, a Rosenwasser percolator had been presented or tendered as a complimentary gift, previous to their testifying.

The witnesses, Mr. Morgan, p. 91 int. 9 and Berry, p. 43. int. 28 Peapke, p. 124 int. 58, prove the substantial identity of this device as used by Neitsch with the Rosenwasser apparatus.

A similar apparatus was made and used by Dr. Hampton E. Hill in Portland, Me., as early as 1869. Ex. 14 shows identity of form, structure and combination with that described in Rosenwasser's patent. See Dr. Hill's testimony, p. 66 et seq. Comparison by Mr. Morgan, p. 90–91.

The attention of the Court is next invited to Exhibit 10.

This apparatus was constructed and used by Mr. Berry in 1878 (p. 40).

It is substantially the same in principle as the Boullay percolator, when used with a column of water, as described in the U. S. Dispensatory.

As compared with the Rosenwasser device, aside from the internal arrangement of the diaphragms and some improvements in the forms of the vessels as mentioned by Mr. Berry on pp. 40 and 41, every essential claim of Rosenwasser appears to have been anticipated in this Exhibit 10. It is a better and much more practical apparatus than Rosenwasser's.

Except in the arrangement of the diaphragms the Exhibit is in all its essential parts as combined, the Realsche Presse as described in Geiger's Pharmacy and used by Neitsch

Berry, pp. 41–44.

Morgan, pp, 87–90, 91, 92, 94.

and embraces the entire combination contained in complainants' patent, (Morgan, p. 94 bottom of page).

This device differs from the defendant's apparatus shown as Exhibit G, only in the arrangement, adjustment and operation of the diaphragms.

If Exhibit G is identical with complainants' apparatus as patented as the complainants assert, then Exhibit 10 is also identical.

This Exhibit 10 constructed and used by the defendant in 1878, is proved to have been so constructed and publicly used by the defendant at Biddeford, Maine, long before Rosenwasser applied for his patent, by the testimony of John Berry, p. 40.

Dr. H. E. Hill, pp. 67, 68.

Geo. R. Ricker, p. 73.

Charles Seigmond, p. 75.

Edward E. Swett, pp. 79–83.

Dr. C. J. Emery, p. 196.

Rosenwasser's application was filed May 31, 1881. Ex. 10 was used by the defendant in 1878.

In reply to these witnesses, William E. Emery, p. 161 and Edwin U. Blackstone, were produced by the complainants. Both of these witnesses were discharged by Mr. Berry from his employment because they were dishonest, unsteady and untruthful. Mr. Berry and Wil-

liam Moran, p. 187, in addition to the other witnesses last above referred to, settle this point beyond any question.

Upon this showing the alleged invention of Rosenwasser was anticipated long since, by the invention of others and complainants' patent is void.

IV.

The allegation of infringement set out in the complainant's bill is not sustained.

The answer in this case is responsive and denies infringement. It has been shown that the complainants' combination was not the invention of Rosenwasser and that his letters patent are void. An infringement is the use of a thing invented and secured by a valid patent.

WILBUR F. LUNT,
of Counsel.